

# TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

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No. 108

INTERSTATE COMMERCE COMMISSION, APPELLANT

vs.

THE NEW YORK, NEW HAVEN AND HARTFORD  
RAILROAD COMPANY, ET AL.

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No. 109

SEA-LAND SERVICE, INC., APPELLANT

vs.

THE NEW YORK, NEW HAVEN AND HARTFORD  
RAILROAD COMPANY, ET AL.

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No. 110

SEATRAN LINES, INC., APPELLANT

vs.

THE NEW YORK, NEW HAVEN AND HARTFORD  
RAILROAD COMPANY, ET AL.

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No. 125

UNITED STATES, APPELLANT

vs.

THE NEW YORK, NEW HAVEN AND HARTFORD  
RAILROAD COMPANY, ET AL.

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APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF CONNECTICUT

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NOS. 108, 109 AND 110. FILED MAY 8, 1962

NO. 125. FILED MAY 16, 1962

PROBABLE JURISDICTION NOTED OCTOBER 8, 1962

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Also for the convenience of the Court and the parties the Railroads have printed in this Appendix the provisions of the statutes which are discussed in the several documents above listed. Other statutory provisions, particularly applicable to this litigation, have also been printed in this Appendix.

When any of the materials contained in this Appendix are referred to in the Brief, the page reference in this Appendix is preceded by the letter "A". Thus, a reference to Page 25 of this Appendix is designated "A. 25".

Since this Appendix has been circulated to all parties in this litigation well in advance of the circulation of the Railroads' Brief, it is hoped that such parties when referring to any of the documents in this Appendix will use the same designation. If this is done, the proceedings before this Court will be greatly simplified.

~~H~~~~THE SIX REPORTS AND ORDERS~~

## INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET NO. M-10415<sup>1</sup>

COMMODITIES—PAN-ATLANTIC STEAMSHIP CORPORATION

*Decided December 19, 1960.*

1. In I. & S. Nos. 6906 and M-11375, and embraced proceedings, and upon reconsideration in I. & S. No. M-10415 and embraced proceedings, sea-land local and joint single-factor through rates on numerous com-

1. In addition to the above-entitled proceeding and 23 others embraced therewith, listed in footnote 1 of the prior report, 309 I. C. C. 587, which are here reconsidered, this report also embraces 19 other proceedings initially decided herein following oral hearing on three separate records, namely:

I. & S. No. 6834, Piggy-Back Rates—Between East and Texas, and the following embraced proceedings: No. 32513, Commodities—Pan-Atlantic—Between East and Texas, and Fourth Section Application No. 34227, Trailer-on-Flat-Car Service Between Official Territory and Dallas-Fort Worth, Tex.

I. & S. No. 6906, Commodities Via Pan-Atlantic Between Texas, Louisiana, and Florida, and embraced proceedings: I. & S. No. 6918, Bags and Boxes—New Orleans, La., to Fla., I. & S. No. M-11051, Clay and Rosin—South to East, I. & S. No. M-11034, Canned Goods—Fort Pierce, Fla., to Brewster, N. Y., I. & S. No. 6932, Petroleum Products—Baton Rouge to Miami, I. & S. No. M-11264, Various Commodities—Pan-Atlantic Steamship Corporation, I. & S. No. M-11259, Pan-Atlantic Steamship—Between East, South, and Southwest, I. & S. No. M-11077, Commodities Via Pan-Atlantic—East to Florida, Louisiana, and Texas, and I. & S. No. M-11361, Canned Goods—Fort Pierce, Fla., to New York, N. Y.

I. & S. No. M-11375, Tires, Chemicals, and Paint Via Pan-Atlantic, and embraced proceedings: I. & S. No. M-11387, Commodities in Motor-Water-Motor Service—N. J. & Pa. to Fla., La., and Tex., I. & S. No. M-11465, Various Commodities—East to South & Southwest, I. & S. No. 6962, Roofing—New Orleans to Tampa, I. & S. No. M-11421, Iron or Steel Castings or Forgings, Houston, Tex., to Buffalo, N. Y., I. & S. No. M-11436, Machinery—New Britain, Conn., to Lubbock, Tex., and I. & S. No. M-11369, Aluminum and Junk, Miss. and Ala. to East.

modities, in trailerload, multiple trailerload, and volume quantities, over single-line routes of Pan-Atlantic Steamship Corporation and joint line routes of motor common carriers and Pan-Atlantic, from, to, and between numerous points in the East, on the one hand, and, on the other, points in the South and Southwest; also from and to points in the South, and between such points, on the one hand, and, on the other, points in the Southwest, found lawful, except as indicated in the report. Prior findings in I. & S. No. M-10415 and embraced proceedings, 309 I. C. C. 587, affirmed. The excepted rates ordered canceled.

2. In No. 32313, sea-land rates, except a rate of Pan-Atlantic, and rail-water-rail rates of Seatrain Lines, Inc., on numerous commodities over water-rail routes from origins in the East to Dallas and Fort Worth, Tex., found not shown to be unlawful. Unlawful rate ordered canceled.
3. In I. & S. No. 6834, proposed reduced trailer-on-flatcar rates on numerous commodities between points in official territory, on the one hand, and on the other, Dallas and Fort Worth, found unjust and unreasonable; and, in Fourth Section Application No. 34227, authority to establish and maintain the proposed trailer-on-flatcar rates without observing the long-and-short-haul provisions of section 4 of the Interstate Commerce Act, denied. Proposed schedules ordered canceled, without prejudice to the filing of new schedules in conformity with findings made.

4. Proceedings discontinued.

Appearances as shown in 309 I. C. C. 587, and in addition:

*John P. Ganly* for rail-carrier respondents in I. & S. No. 6834, applicants in F. S. A. No. 34227, and interveners in opposition in No. 32313.

*A. J. Bordelon* for protestant railroads in I. & S. No. 6906 and embraced proceedings, and *Toll R. Ware* for protestant railroads in I. & S. No. M-11375 and embraced proceedings.

*Ernest M. Sharp* for the Houston Port Bureau, Inc., *Arthur L. Winn, Jr.*, *Samuel Moerman*, and *Walter J. Myskowski* for the Port of New York Authority, *James J. Fisher*, Port Agent for the City of Providence, and *Louis A. Schwartz* for the New Orleans Traffic and Transportation Bureau, protestants in I. & S. No. 6834 and F. S. A. No. 34227, and interveners in support of respondent Pan-Atlantic Steamship Corporation in No. 32313.

### **Report of the Commission on Reconsideration**

#### **BY THE COMMISSION:**

These proceedings are related and will be disposed of in one report. It was agreed by the parties that all of the evidence in I. & S. No. M-10415 and proceedings embraced therein could be referred to in the other proceedings and, to the extent relevant, would be competent evidence therein. As indicated in footnote 1, 43 separate proceedings are embraced herein. The title case and the 23 proceedings embraced therewith were the subject of a prior report, 309 I. C. C. 587, which is here being reconsidered. The other 19 proceedings were the subject of three separate reports proposed by the examiner in I. & S. Nos. M-11375, 6834, and 6906, and embraced proceedings.

Exceptions to the proposed reports and replies thereto were filed by the respondents and the protestants. The issues have been orally argued before us. Our conclusions differ in part from those proposed. Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

The issues presented are the justness and reasonableness of several sets of rates<sup>2</sup> involving different modes of transportation, namely, (1) certain reduced so-called sea-land rates of the Pan-Atlantic Steamship Corporation<sup>3</sup> and the motor common-carrier participants in its tariffs; (2) numerous rail-water-rail rates of Seatrain Lines, Inc.; and (3) numerous proposed reduced rail trailer-on-flatcar rates, hereinafter called TOFC rates, which reflect substantial parity with the sea-land and Seatrain rates and which the railroads claim are necessary for them to compete for this traffic. The most important question before us here is whether, in attempting to meet the competition of Pan-Atlantic and Seatrain, the railroads may establish compensatory rates which are on a parity with the rates of those competitors, or whether the rate-making provisions of the Interstate Commerce Act, interpreted in the light of the national transportation policy, under the facts here presented, require that the rail rates on this traffic be maintained differentially higher than the rates of those competing modes.

The prior report in I. & S. No. M-10415 and embraced proceedings sets forth the history and description of the sea-land service of Pan-Atlantic, its advantages and disadvantages, rationale of the cost evidence, and other background material. A clear understanding of the related issues in these proceedings requires first a summarization of this evidence, after which we shall direct our attention to the issues and contentions of the parties in these proceedings.

The sea-land service of Pan-Atlantic in conjunction with certificated motor carriers, and by the use of its own motor equipment, moves merchandise freight in highway containers over motor-water-motor routes between the East, on the one hand, and the South and Southwest, on the other, and also between the Southwest and the South. The freight is moved from the shippers' docks over the highways in

2. Rates and costs are stated per 100 pounds, except as otherwise indicated.

3. Name changed to Sea-Land Service, Incorporated, on April 1, 1960.

demountable highway containers to the port and thence lifted onto Pan-Atlantic ships for movement to the destination ports. At the destination ports the containers, with the freight intact, are lifted off the ships and onto highway trailers for delivery to the consignees' docks. This service is closely akin to railroad trailer-on-flatcar service with the substitution of the deck or the hold of a vessel for the rail flatcar.

Prior to the institution of sea-land service Pan-Atlantic engaged in break-bulk water service, which also provided joint routes with motor common carriers and door-to-door service from consignor to consignee. In the prior break-bulk service longshoremen handled the lading into and out of the ships, whereas in sea-land service the containers with the lading are lifted on and off the ships by the use of two gantry-type cranes on each vessel. Each crane is capable of unloading one trailer and placing another on board ship in about five minutes. These patented cranes are part of the ships, and eliminate the need for costly shore installations. The cranes make it possible to serve any port having adequate water and dockside aprons large enough to permit bringing a truck chassis alongside the vessels. Compared with the slower and more expensive break-bulk service, sea-land has reduced considerably Pan-Atlantic's costs, the cargo-handling time, the in-port vessel time, and its loss, damage, and pilferage expenses.

Whether the containers are loaded or empty, a full complement of 226 containers is carried on each voyage. To achieve the proper balance of the cargo, it is necessary that there be a systemized sequence of loading the trailer bodies. For this purpose, many of the outbound containers are assembled at a parking lot near the port at least 60 hours in advance of the vessel's arrival, and the bulk of the cargo must be delivered to shipside parking lots at least 12 hours before the arrival of the ship. The proper sequence of loading affects the trim of the vessel, the list of the vessel during and upon completion of loading, and the degree of roll and

stability. In addition, certain types of containers must be stowed in a limited number of positions only, depending upon the weight, the container construction, the cargo carried, and the destination. One truck breakdown en route to the parking lot from a pickup point could destroy the entire planned loading sequence for any one hatch. Generally, Pan-Atlantic cannot accept sea-land freight and load it on a ship the same day.

Both single-line and joint-line sea-land services are provided by Pan-Atlantic. It operates single line between ports and port terminal areas which it is authorized to serve, by use of its trailerships on the water and leased tractors and trailers on the land. In some instances Pan-Atlantic has operated single line as far as 60 miles beyond a port; its performance of such extensive "terminal" service was found to be without appropriate authority in *Central Truck Lines, Inc. v. Pan-Atlantic S. S. Corp.*, 82 M. C. C. 395.

The joint-line sea-land service of Pan-Atlantic extends well beyond the ports and port terminal areas. For example, electrical appliances may move joint-line motor-water-motor, from Somersworth, N. H., via the ports of New York (Port Newark, N. J.) and Houston to Dallas, Tex.

Presently, Pan-Atlantic is a wholly-owned subsidiary of McLean Industries, Inc. The total investment in the new type sea-land operations made by McLean, or its subsidiaries or affiliates, aggregate between \$40 and \$45 million, of which about 50 percent was used for conversion of break-bulk type vessels to sea-land vessels, over \$20 million for automotive equipment, and about \$500,000 for procurement of terminal facilities, including docks, piers, staging areas, and warehouses.

Beginning in 1933, Pan-Atlantic operated as a conventional break-bulk carrier, except during the World War II years. In May 1957, it suspended its Atlantic-Gulf coastwise break-bulk service to provide vessels for conversion into trailerships. For its sea-land service in the Atlantic-Gulf coastwise trade, it converted four vessels into trailerships,



each with a capacity of 4,000 tons of payload freight, and each holding 226 containers, of which 166 are stowed below deck and 60 on deck. The ships are 468 feet long and capable of a speed of about 15.5 knots, substantially the same as when the ships were used in the break-bulk service.

Prior to World War II there were about 19 deepwater common carriers operating in the Atlantic-Gulf coastwise trade, employing about 139 vessels. In 1940, these water carriers transported more than 8,500,000 tons of cargo. Today, only two carriers are in this trade: namely, Seatrain and Pan-Atlantic, operating, respectively, six and four vessels. A comparison made by Pan-Atlantic shows that between 1939 and 1956, inclusive, the tonnage handled by class I railroads in the United States increased 160.5 percent, and the tonnage handled by class I motor carriers increased 545.6 percent. Excluding bulk oil carried by Seatrain and Pan-Atlantic, the tonnage handled by water carriers in the Atlantic-Gulf coastwise trade during that period declined 79 percent.

Since World War II there has been a substantial expansion of commerce in the United States, particularly in the South and Southwest. An exception to the general growth of transportation has been the Atlantic-Gulf coastwise dry-cargo tonnage of the water service. Pan-Atlantic estimates that Seatrain operating at full capacity could transport about 1 million net tons annually, and that Pan-Atlantic could transport about 800,000 net tons per year (100 round-trip voyages with full loads of 4,000 tons in each direction). The total for the two water carriers would thus be 1,800,000 net tons, compared with over 8,500,000 net tons transported prewar by the water carriers in the same trade. Excluding bulk petroleum carried in tankers, Pan-Atlantic carried in excess of 1 million tons in its coastwise break-bulk service in 1950. In 1956 and 1957, it carried in coastwise service only 433,915 and 332,057 tons, respectively.

Traditionally, water rates, including water-rail and water-motor rates, have been maintained at levels differen-



tially lower than the corresponding all-rail rates, principally because of disadvantages in the water service due to, perils of the sea, slower transit time, and infrequency of sailings. The last major proceeding in which the rates of the Atlantic-Gulf coastwise water carriers were considered was *Class Rate Investigation, 1939*, 286 I. C. C. 5 (docket No. 28300—1952). Therein, we prescribed reasonable maximum first-class rates on ocean-rail traffic, and also reasonable percentage relations of the lower classes to first class, between North Atlantic ports and interior points in eastern seaboard territory, on the one hand, and, on the other, New Orleans and Baton Rouge, La., Texas Gulf ports, and interior points in the Southwest. Those class rates were designed to preserve the then-existing differentials of the ocean-rail rates under the all-rail rates.

The prescribed rates in No. 28300 were class rates, whereas in the instant proceedings only commodity rates are in issue. When it inaugurated the sea-land service, Pan-Atlantic evaluated the rate structures of the existing water and overland carriers and concluded that its sea-land service needed rate differentials under all-rail rates, but that lesser differentials would suffice than those maintained under its previous break-bulk service.

For its trailership service, Pan-Atlantic first put into effect class rates, and later commodity rates. Generally, the class rates were protested, but were not suspended and became effective. Many of the commodity rates were suspended and are under investigation in these and other proceedings. The class-rate structure, established by Pan-Atlantic varies depending upon origins and destinations, the direction of the competing rail ratemaking routes, the constructive water mileages, and the prescribed maximum ocean-rail rates, among other factors. Generally, its trailership class rates are on the basis of 92.5 percent of the overland-carrier rates on terminal (port) to terminal (port) traffic, and on the basis of 95 percent of the overland rates

on traffic moving from, to, or between interior points located beyond the terminals (ports).

The commodity rates for its trailership service in general were related percentagewise to the all-rail commodity rates in the same measure as the sea-land class rates are related to the all-rail class rates. As there are exceptions to the 92.5-95 percent formula in the class-rate structure, so also there are numerous exceptions to that formula for commodity rates. Individual adjustments are made in the latter rates because of varying competition with all-rail carriers, all-motor common carriers, Seatrain, a barge line, and exempt motor carriers. Also, there are instances where the sea-land rates were designed to preserve competitive relations between shippers located at different origins. The result is a wide fluctuation in the differentials between the sea-land rates and the all-rail commodity rates.

Pan-Atlantic contends that the primary accomplishment of its sea-land trailership service lies in the reduction of its internal operating expenses, rather than in any substantial improvement in the value of its service to the public. The expenses in the present sea-land trailership operation are from \$10 to \$12 per cargo ton less than those incurred in the previous break-bulk type of operation. This reduction in expense is mainly a result of the reduction in cargo-handling time and in port vessel time. On the other hand, the rail and motor carriers generally contend that there has been a substantial change in the character of Pan-Atlantic's service from the old break-bulk service to the new trailership service, and particularly in its value to the shipping public. Pan-Atlantic's own literature and public advertisements represent that its trailership service will save transportation costs, avoid delays, prevent damage, and accomplish a reduction in loss, damage, and pilferage.

The views of the shippers on the comparative value of sea-land service to rail service were many and varied, according to their individual transportation problems. Door-to-door service is an important consideration to many ship-

pers. In sea-land service, the lading often moves in a sealed trailer from the door of the consignor to the door of the consignee without being handled en route. Where a shipper or consignee does not have a private or assigned rail siding, the sea-land service has a distinct advantage over rail service, the same as all-motor service. Thus, some New York City consignees do not have private or assigned sidings, which makes drayage necessary when using all-rail service. A survey made by Pan-Atlantic showed that out of 2,350 of its potential shippers and consignees, 1,805, or about 77 per cent, had private rail sidings, while 545 were either not located on rail sidings or were served by team tracks.

Among other factors considered by the shippers in determining the value of the respective services are time in transit, frequency of service, costs of loading and unloading, cost of blocking, dunnage, and bracing, loss or damage, and the availability of stop-off privileges. The testimony of the shippers on these value-of-service factors is recounted in detail in the prior report. Generally, their testimony was inconclusive and failed to show whether the water-carrier's service or the railcarriers' service is more valuable to the shippers by reason of these compared factors.

The most important, and usually the determinative, factor to the shippers as a whole is the measure of the rates. Most of the shippers would not use sea-land service at rates equal to or higher than all-rail or all-motor rates. A number of shippers also would not use sea-land service at rates higher than those of Seatrain. Some shippers who would not use sea-land service if Pan-Atlantic's rates were equal to the rail rates, also would not offer any of their traffic now moving by sea-land service to the railroads if the rail rates are maintained at the present differentials over sea-land rates. Certain other shippers would not use all-rail service even at differentials under all-motor or sea-land rates. Price competition in the sale of some commodities is so keen that the shippers thereof cannot pay a transportation premium for one mode of service as against another.

As indicated, the proceedings herein were heard on four separate records under the lead docket numbers, I. & S. Nos. M-10415, 6834, 6906, and M-11375, and for convenience of further discussion the other pertinent facts and contentions of the parties are hereinafter discussed under those respective numbers.

The reduced sea-land rates of Pan-Atlantic and the rail-water-rail rates of Seatrain here under investigation have become effective; the effective date of the proposed reduced TOFC rates has been voluntarily postponed by the rail carriers. For convenience, the rates under investigation will sometimes be referred to as the proposed rates.

#### I. & S. No. M-10415.

In the prior report in these proceedings, division 3 considered the lawfulness of approximately 469 proposed reduced commodity rates of Pan-Atlantic and the motor common-carrier participants in its tariffs for the transportation in sea-land service of numerous commodities in trailerload, multiple trailerload, and volume quantities from, to, and between numerous points in the East, South, and Southwest.

Generally, the proposed sea-land rates are lower than the all-rail boxcar rates. In a few instances, for example where there are several rates and minima on a commodity, the all-rail rates are lower than the proposed sea-land rates at the higher minima. Certain of the proposed sea-land rates are listed in appendix A to the prior report, together with the sea-land costs and corresponding all-rail rates and costs. The sea-land costs are broken down between the Pan-Atlantic portion and the motor-carrier portion. Also shown in that appendix are representative examples of the ratios of the sea-land rates to the sea-land costs, and the ratios of the sea-land costs to all-rail costs. The costs shown in that appendix are those obtained from a restatement of the sea-land costs by our Cost Finding Section. The detailed rationale of the restatement is found in appendix B to the prior report.

Of the 489 rates listed, including 20 rates cancelled under special permission, 13 failed to yield out-of-pocket cost, and 145, or about 30 percent, failed to yield fully-distributed cost. In the circumstances presented, division 3 concluded that a lawful rate need not necessarily yield fully-distributed cost. Some of the sea-land rates are more than double the out-of-pocket costs and nearly double the fully-distributed costs. Other sea-land rates exceed the costs by narrower margins. Of the 13 rates which failed to cover out-of-pocket costs, two were cancelled under special permission.

In the prior report, division 3 found the proposed reduced sea-land rates of Pan-Atlantic not unlawful, except 11 rates on the commodities and from and to the points shown in the footnote below,<sup>4</sup> which failed to cover out-of-pocket costs. The latter rates were found not shown to be just and reasonable, and ordered canceled.

Upon petition of the railroad protestants, to which the respondents replied, we reopened the proceedings for reconsideration on the present record. The rail protestants do not seek reversal of the prior finding that, with the exceptions noted, the proposed sea-land rates are not unlawful. They do not question that finding. Their request for reconsideration is based upon the ground that the division strongly inferred in its report that in its consideration of any future rail-rate adjustments on this traffic, it would disapprove rail rates that would eliminate rate differentials in favor of sea-land. The protestants admit that no differentials or rate relationships which would prevent the adjustment of rail rates in the future were prescribed, but they object to the following paragraph on page 606 of the prior report:

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4. Shipping carriers (empty barrels and bottles) from Daytona Beach, Fla., to Philadelphia, Pa.; canned goods from New Orleans, La., to Baltimore, Md., and Rochester, N. Y.; from Gulfport, Miss., to Philadelphia, and from St. Francesville, La., to Miami, Fla.; pulpboard from Bogalusa, La., to New York, N. Y., and from Kreole, Miss., to New York and New Brunswick and Wharton, N. J.; and synthetic plastics from Baton Rouge, La., to Baltimore and Rome, N. Y.

There is indication that if the proposed rates are approved, the all-rail carriers intend to counter with reduced rates of their own. In such event, they should take into account the effect thereof upon the national transportation system and the implications of the national transportation policy, consideration of which is required by the established rules of ratemaking.

The railroads also object to the conclusion on page 605 that "the evidence indicates that the sea-land service generally must have rates lower than those by rail in order to attract any substantial volume of this traffic." They argue that this conclusion rests solely upon the unsupported belief that sea-land is an inferior service and that it must be protected from the price competition of the railroads. These protestants request that the report be so modified as to make clear that the approval of any of the sea-land rates does not constitute a prescription or approval of differentials in favor of sea-land rates compared with rail boxcar rates.

The prior report is criticized also by the railroads for its failure to adopt the examiner's conclusion that, comparing the rail boxcar service with the sea-land service, the cost studies indicate that the railroads are generally the lower-cost agency. In this connection, the division, while accepting the Cost Finding Section's restated costs, stated at page 605:

. . . we do not have before us either the rail or sea-land costs as to many of these rates, and there is a complete absence of any all-motor costs. Moreover, as above discussed, other considerations enter into the factor of inherent advantages. For these reasons, we cannot determine on this record where the inherent advantages may lie as to each commodity, and still less as to each particular rate.

The foregoing conclusion of the division was based primarily on the fact that the all-rail costs submitted by the railroads dealt with 268 movements whereas 469 sea-land



rates are involved. Either rail class or commodity rates are published from and to all of these points.

The ultimate conclusion of the Cost Finding Section as to the lower-cost agency was included in the examiner's proposed report, but was omitted in the division's report. The parties stipulated that the several cost studies could be referred to the Cost Finding Section for analysis. Since that section has been cast in the role of an expert witness, its conclusion in the analysis should have been included in the report. That conclusion is that a comparison of the sea-land costs with the all-rail costs of record shows that for most of the movements where rail costs are shown the sea-land costs exceed the all-rail costs of boxcar service, and that this latter relationship is more pronounced at high minimum weights. We have considered the Cost Finding Section's conclusion along with other facts of record in reaching our conclusions herein.

Our disposition of the other arguments and contentions in the rail carriers' petition for reconsideration is reflected in the findings hereinafter made.

#### I. & S. No. 6834.

By schedules filed to become effective on November 14, 1957, and later, in I. & S. No. 6834, the rail-carrier respondents proposed to establish new reduced rates listed in 27 tariff items on numerous commodities in TOFC service between <sup>5</sup> points in the East, on the one hand, and, on the other, Dallas and Fort Worth. Upon protests thereto, the operation of the schedules was suspended to and including June 13, 1958. The effective date of the schedules has been postponed voluntarily by the respondents.

In Fourth-Section Application No. 34227, the respondent rail carriers seek authority to establish and maintain

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5. With one exception, the proposed rates are southbound from points in the East to Dallas and Fort Worth. There is one northbound rate on bags, cotton, new or old, from Dallas and Fort Worth to Baltimore, Md. This northbound rate also applies from and to other points taking the same rates, as provided in the tariff.

the above-mentioned TOFC rates without observing the long-and-short-haul provisions of section 4 of the act. The carriers propose to continue to maintain certain higher rates to and from intermediate origins and destinations. The proposed rates and the application for fourth-section relief in connection therewith are opposed by the Secretary of Agriculture of the United States, Pan-Atlantic, Seatrain, The Eastern Central Motor Carriers Association, Inc. (called Eastern Central), the Houston Port Bureau, Inc., the Port of New York Authority, the City of Providence, and the New Orleans Traffic and Transportation Bureau. No shippers or receivers located at the intermediate points oppose the granting of fourth-section relief.

In No. 32313, by order dated November 8, 1957, an investigation was instituted into effective rates of Pan-Atlantic listed in 22 tariff items in connection with its sea-land service on numerous commodities from origins in the East to Dallas and Fort Worth. By first supplemental order dated December 18, 1957, the investigation was broadened to include certain effective rates of Seatrain in connection with its rail-water-rail service from eastern origins to Dallas and Fort Worth. The sea-land and Seatrain rates are opposed by the rail carriers and by Eastern Central.

The proposed TOFC rates are on a parity with the present sea-land rates, and are substantially the same as the Seatrain rates. Since the railroads are parties to the Seatrain rates to the extent that such rates apply from inland points, technically the railroads are respondents in No. 32313, but they are not defending the Seatrain rates.

*The background of the TOFC and other rates.*—The railroads published the proposed TOFC rates on a parity with the current rates for the sea-land service upon the assumption that these two operations, which have many of the characteristics of overland motor-carrier service, are equivalents from a quality standpoint, and that therefore, in the absence of special circumstances, they should be



priced at the same levels. Generally, as stated, Pan-Atlantic and Seatrain contend that the water-carrier services are entitled to rates differentially lower than the rates of the overland carriers. Eastern Central takes the position that TOFC rates generally should be continued on the level of the motor common-carrier rates, and that if TOFC rates are reduced the motor-carrier rates also will have to be reduced. It urges that the railroads in their proposed TOFC service may not find it necessary to meet the exact Pan-Atlantic rates, and that the record may warrant a differential of the Pan-Atlantic rates under the TOFC rates, which it believes, however, should be less than the differentials presently maintained.

Rail TOFC service between points in the Southwest and points in the western part of official territory, including Pittsburgh, Pa., was inaugurated on June 13, 1956. Later, on September 8, 1956, the official-territory origins were extended to include points east of Pittsburgh. For this service, rates were published generally on a parity with the prevailing motor-carrier rates. When Pan-Atlantic inaugurated its sea-land service between the Southwest and the East in the fall of 1957, the railroads were convinced that they could not compete without a reduction in their TOFC rates. They decided to publish TOFC rates on the same level as the sea-land rates, but not between all origins and destinations. It was their intention to publish the TOFC rates herein from selected points in official territory to Dallas and Fort Worth as a limited pilot or trial effort to meet the sea-land rates. A wholesale reduction in the TOFC rates would have disturbed competitive patterns between the railroads and the motor common carriers, and also would have created competition among the rail services, because the TOFC rates on the sea-land basis in many instances would have been lower than the all-rail boxcar rates.

Since the proposed TOFC rates were made applicable only to the destinations of Dallas and Fort Worth, they would result in fourth-section departures. Avoidance of

these departures would have entailed substantial reductions in rail revenues at intermediate points well outside the sphere affected by the sea-land competition. There is such competition at Dallas and Fort Worth.

The general rate situation among the various carriers herein is illustrated by the rates on candy and confectionery. For example, from Naugatuck, Conn., to Dallas and Fort Worth, the sea-land rate is 207 cents, minimum 36,000 pounds, and this is also the proposed TOFC rate. The Seatrain rate from and to the same points is 208.25 cents, minimum 65,000 pounds. The present all-rail boxcar rate is 220 cents, minimum 36,000 pounds, and the corresponding all-truck rate in effect prior to December 9, 1957, was 284 cents, minimum 23,000 pounds.

The proposed TOFC rates, in reflecting parity with sea-land rates, at times go below the Seatrain rates. The sea-land rates are not always the same as the Seatrain rates, and there are differences also in the minimum weights. In part, the differences between Seatrain and sea-land rates are caused by the variations in the application of general increases on the single-factor sea-land commodity rates and on the combination rail-water-rail Seatrain rates. Where the Seatrain rates are competitive with the rates of the overland carriers, it is the intention of Pan-Atlantic to eliminate minor differences between its rates and the rates of Seatrain by adjusting the sea-land rates to the level of the Seatrain rates. In those instances where Pan-Atlantic does not consider the Seatrain rates to be competitive with the rates of the overland carriers, it intends to maintain differentials so that the sea-land rates will be about 5 percent under the overland competitive rates.

*Sea-land and TOFC costs.*—Extensive cost evidence was submitted by the rail carriers and by Pan-Atlantic, and, as requested by the parties, this evidence has also been considered by our Cost Finding Section, which has restated the TOFC costs and the sea-land costs. Representative rates, restated costs, and cost ratios are shown in ap-

pendix A hereto. The rationale of the restatement of the TOFC costs appears in appendix B. The rationale of the restatement of the sea-land costs is the same as that used in connection with I. & S. No. M-10415 et al. (appendix B of the report therein), and will not be repeated here.

*The sea-land rates.*—The sea-land rates, with one exception, exceed the restated out-of-pocket cost of performing the service, and they range as high as 258 percent of the out-of-pocket costs. The one exception is the rate of 216 cents, minimum 20,000 pounds, on paint and paint materials, from Baltimore to Dallas and Fort Worth, for which the restated out-of-pocket sea-land cost is 214 cents, or 1 cent more than the rate. There is no corresponding proposed TOFC rate, minimum 20,000 pounds. There are under investigation herein both a sea-land and a proposed TOFC rate on paint and certain other commodities from Baltimore of 187 cents, minimum 36,000 pounds, which rate exceeds the out-of-pocket costs by sea-land and by TOFC. Most of the sea-land rates herein also exceed fully-distributed costs.

The restated sea-land costs, both out-of-pocket and fully-distributed, are below the restated TOFC costs for all movements of comparable weight as computed for railroad-owned flat cars having a capacity of a single trailer and equipped with tie-down devices. In connection with flat cars not presently owned but leased by the railroads, designed to hold two trailers with special hold-down devices (called TTX cars), the restated sea-land costs are below the restated TOFC costs for all except two of the 66 movements listed in the restatement. We conclude that, generally, for the movements herein, the costs of record indicate that sea-land is a lower cost service than TOFC.

After inauguration of Pan-Atlantic trailership service to and from Houston, Tex., in October 1957, shipments were made in 1957 in connection with only 13 of the 22 Pan-Atlantic tariff items under investigation herein, and only 15 shipments moved under seven of those 13 items. The record does not disclose the amount of traffic handled at

rates in the other six active items, but on the whole the amount of traffic handled in sea-land service at rates in these 22 items in 1957 after inauguration of the service in October apparently was relatively small. There is no indication that Pan-Atlantic has moved any traffic at rates as high as competing all-rail boxcar or TOFC rates.

*The proposed TOFC rates.*—As shown in the restatement of costs by the Cost Finding Section, the proposed TOFC rates equal or exceed the restated out-of-pocket TOFC costs computed for hauls with so-called average circuitry (the short-line distance between the origin and the Chicago and East St. Louis, Ill., gateways and between these gateways and the destination, increased by 13 percent as an allowance for average circuitry); for all listed movements by TTX cars; and for all but six of 66 listed movements by railroad-owned cars. The proposed TOFC rates equal or exceed the fully-distributed costs for 43 movements by TTX cars and for 14 movements by railroad-owned cars. More trailers per car are carried on TTX cars than on railroad-owned cars.

The six movements in railroad-owned cars which do not return out-of-pocket costs are electric switch boxes from Newark, N. J. (rate 240 cents, minimum 24,000 pounds, restated out-of-pocket cost 249 cents); foodstuffs from New York, N. Y. (rate 222 cents, minimum 24,000 pounds, out-of-pocket cost 249 cents); laundry sour from Baltimore (rate 169 cents, minimum 36,000 pounds, out-of-pocket cost 172 cents; and rate 195 cents, minimum 24,000 pounds, out-of-pocket cost 236 cents); alcoholic liquors from Baltimore (rate 267 cents, minimum 20,000 pounds, out-of-pocket cost 276 cents); and alcoholic liquors from Philadelphia (rate 280 cents, minimum 20,000 pounds, out-of-pocket cost 283 cents). As we have no way of knowing the percentages of this traffic which would move in railroad-owned cars and in TTX cars, we conclude that the rates for these six movements are not shown to be compensatory.

*The Seatrain rates.*—The investigation herein of Seatrain rates is limited to those on three groups of commodities, briefly described as linoleum, ammunition, and candy and confectionery. The first commodity group is more generally described as floor coverings or related articles, including carpets, mats, rugs, coverings, and linoleum. The instant rates on linoleum range from 35.5 to 40.6 percent of the No. 28300 first-class rail-water-rail rates. In *William Volker & Co. of Texas, Inc. v. Central R. Co. of Pa.*, 302 U. S. C. 757, the complainants assailed the combination rates on linoleum transported over rail-water or rail-water-rail routes, including rates from and to the origins herein. The assailed rates comprised in most instances the aggregates of intermediate rates, consisting in part of exceptions or commodity-rate factors. These rates produced higher charges than did rates established on the uniform classification basis. We found that for the future those assailed rates were unjust and unreasonable to the extent that they exceeded the contemporaneous uniform classification basis. Rates in conformity with that order, on the basis of 35 percent of first class, were published effective May 15, 1958. These rates, now in effect, are on a basis lower than that reflected by the Seatrain rates on linoleum under investigation herein. Accordingly, this phase of the investigation of Seatrain rates will not be further discussed.

The rates of Seatrain on ammunition here under investigation apply from Edgewater, N. J., to Dallas and Fort Worth on traffic originating at Bridgeport and New Haven, Conn. These proportional rates, when added to the all-rail factors from origin to Edgewater, produce combination rail-water-rail rates to Dallas and Fort Worth of 295 and 300 cents, respectively, minimum 40,000 pounds. These commodity rates alternate with higher rates, minimum 30,000 pounds, not here under investigation, which are based on classification exceptions. The Seatrain commodity combination rates, minimum 40,000 pounds, are re-

lated to the corresponding all-rail commodity rates<sup>6</sup> by lesser differentials than are the Seatrain exceptions class rates to the corresponding all-rail exceptions class rates. The differential of 70 cents per 100 pounds of the rail-water-rail 30,000-pound rates under the corresponding all-rail rates results from the (exceptions) class rates prescribed or approved in docket No. 13535. The commodity combinations, minimum 40,000 pounds, reflect differentials of 39 cents or 56 percent, and 34 cents or 49 percent, respectively, from Bridgeport and New Haven, of the class-rate differential.

During 1957, Seatrain obtained a total of three carloads of ammunition from Bridgeport to Dallas and Fort Worth, and no movement from New Haven. One of the three shipments moved at the 30,000-pound rate and the other two at the 40,000-pound rate. Under the existing rates, Seatrain participated in only a small portion of the ammunition traffic. Obviously, if the ammunition differentials were replaced by rate equalization, Seatrain's competitive position would be weakened considerably.

The rates of Seatrain on candy and confectionery here considered are from Edgewater to Texas City, Tex., on shipments coming from specified origins in Connecticut, Massachusetts, New Jersey, New York, and Pennsylvania. These proportional rates, when added to the all-rail factors to and from the ports, produce combination rates subject to minimum weights of 50,000 and 65,000 pounds which alternate with certain class rates, minimum 36,000 pounds.

The existing all-rail rates on candy and confectionery are exceptions class rates, minimum 36,000 pounds. They are lower than the rail-water-rail class rates, minimum 36,000 pounds, and also lower than some of the Seatrain commodity combination rates, minimum 50,000 pounds. The Seatrain commodity combination rates, minimum 65,000 pounds, are lower than the existing all-rail exceptions class

6. Reference to all-rail rates means to existing all-rail rates, and does not refer to the proposed TOFC rates.



rates, minimum 36,000 pounds, by 5 cents at Camden, N. J., and Philadelphia, Pa., by 9 cents at Boston, Cambridge, Malden, Mansfield, and Milton, Mass., and Reading, Pa., by 11 cents at Naugatuck, and by 12 cents at Brooklyn, N. Y.

Of the 14 origins for candy herein, in 1957 Seatrain obtained only a total of four carloads, each over 65,000 pounds, from Mansfield. Thus, Seatrain participated in only a very small portion of the candy traffic. Obviously, if the candy differentials favorable to Seatrain were replaced by rate equalization, its competitive position would worsen considerably.

*Seatrain costs.*—No evidence was introduced by Seatrain or by any of the other parties herein concerning the cost of the Seatrain service or the compensatory nature of its rates. While it was agreed that the annual reports of all parties might be referred to, and materials therefrom used without proof of authenticity, subject to objections as to relevancy and materiality only, no specific reference to the Seatrain reports was made at the hearing. On brief, Seatrain states that data embodied in its annual reports clearly show the compensatory nature of its rates under investigation herein. We conclude that the evidence does not warrant a finding that the Seatrain rates are noncompensatory.

*The comparative values of the TOFC, sea-land, and Seatrain services.*—From the standpoint of the shipper, the TOFC service and the sea-land service are similar in that both provide door-to-door motor-carrier service; that is, the shipment leaves the consignor in a motor-carrier trailer and arrives at the door of the consignee in the same motor-carrier trailer. In TOFC service, the trailer is moved on railroad flat cars, and in sea-land service the trailer body or box is moved on a trailership during the course of the line-haul movement.

Seatrain service is similar to all-rail boxcar service in that the service offers to the shipper the transportation of

his lading in a rail car from consignor to consignee. To the extent that all-rail service has certain service disadvantages, such as in the case of a shipper not located on a private siding, these disadvantages also generally beset the Seatrain service. Seatrain at present offers service between the ports of Edgewater, on the one hand, and, on the other, Belle Chasse, La., and Texas City, using freight cars as containers. Seatrain contemplates the inauguration of a new so-called "seamobile" service, which is to be similar to Pan-Atlantic's sea-land service. Seamobile would use special containers which would be transferred readily between Seatrain vessels and highway trailers or rail cars.

The rail carriers regard Seatrain as offering a lower-quality service than TOFC, and TOFC service as generally of higher quality than all-rail boxcar service. According to them, there is no indication that Seatrain service is of lower quality than all-rail boxcar service.

Generally, all of the parties agree that TOFC is a higher quality service than all-rail boxcar service. A number of shipper witnesses presented by Pan-Atlantic stated that they would not use sea-land service at rates equal to or higher than the all-rail rates. Although this testimony dealt primarily with a comparison of sea-land with rail boxcar service, inasmuch as TOFC is of higher quality than all-rail boxcar service, it follows that the testimony has application also to a comparison of sea-land with TOFC service.

On the other hand, a number of shipper witnesses presented by the rail carriers made statements to the effect that they would not use TOFC service unless the railroads offered piggy-back rates equal to sea-land rates. Some of these shippers would not use carload boxcar service because their customers are not located on rail sidings, whereas sea-land service provided store-door delivery, and these shippers indicate that the railroads must provide TOFC service to compete with the sea-land service. One of these shipper witnesses stated that transit time has never been an important factor to it. Other shippers are concerned with



transit time, and state that between certain points not in issue herein sea-land service has been faster than all-rail boxcar service.

Slower transit time is listed by Pan-Atlantic as one of its service disadvantages in relation to the proposed TOFC service. On four voyages during November and December 1957, the average transit time by sea-land was 13.98 days from eastern origins to Dallas and Fort Worth, and a study made by the rail carriers for all-rail boxcar service showed an average transit time of 10 days from New England to the Southwest and 9 days from trunk-line territory to the Southwest. Generally, so far as this record shows, TOFC service has about the same or one day faster transit time than all-rail boxcar service. For cost purposes, the rail carriers and Pan-Atlantic used TOFC costs for trailer rental based on average round-trip times, respectively, of 13.4 days and 14 days. We conclude that the average one-way TOFC transit time from origin to destination is about 7 days, and that sea-land service is generally slower than TOFC service.

Seatrain lists the same general disadvantages of its service in relation to the proposed TOFC service as were listed by Pan-Atlantic. Seatrain has two weekly sailings from Edgewater to Texas City, and two weekly sailings in the reverse direction. Seatrain time in transit by water between these ports is six days one way, and to this time there must be added from three to five days for the movement from New England or trunk-line territory to Edgewater, and two days for the movement from Texas City to Dallas or Fort Worth. Seatrain transit time is slower than the proposed TOFC service. Seatrain also lists restrictions on the size of cars which its vessels are designed to handle, and the bunching of cars at destination when shipped via Seatrain to a multiple-car consignee, as additional service disadvantages. As stated, it is conceded by the parties that Seatrain offers a lower-quality service than TOFC.

Generally, the rail carriers consider sea-land service to be superior to the Seatrain service. Pan-Atlantic contends

that the railroad position is influenced by the fact that some of the railroads participate in the joint rail-water-rail operations of Seatrain, and that the railroads hope to make sea-land rates noncompetitive with Seatrain, thus forcing Pan-Atlantic out of the Atlantic-Gulf trade. It states that many of the Seatrain rates are maximum rates prescribed for application by Seatrain in No. 28300, and that such rates cannot be condemned for application by Seatrain in the same manner that the railroads are seeking to have them condemned for application via Pan-Atlantic.

Seatrain takes the position that there is nothing of record to justify sea-land rates lower than Seatrain rail-water-rail rates, and that sea-land truck-water-truck rates which are lower than Seatrain rates, either in the measure of the rate or by virtue of lower minimum weights, or both, are unjust, unreasonable, lower than competitively necessary, and therefore injurious to the rate structure and contrary to the national transportation policy. It asks that Pan-Atlantic be ordered to publish and maintain rates and minimum weights no lower than those maintained by and for the account of Seatrain in its rail-water-rail service.

The evidence shows that sea-land and Seatrain services, in so far as the water transportation is concerned, are substantially similar. Both transport cargo in containers on ocean vessels, in one case truck trailers and in the other, rail freight cars. In both, marine insurance is provided by the carriers. Both transport truckload or carload cargo from the consignor to the consignee in a single container without transfer of lading. A difference is that, unless the shippers and consignees are on sidings, door-to-door pickup and delivery cannot be made by rail car as in the case of motor truck-trailers. Uncertainty of ocean transport, infrequency of sailings, and longer transit time than by TOFC, are factors present both in sea-land and Seatrain service.

Many shippers would not use sea-land service unless the sea-land rates were no higher than the Seatrain rates. One shipper at Syracuse, N. Y., whose plant was constructed for rail shipments, would prefer to ship by all-rail or by

Seatrain, rather than by sea-land. At least one shipper would discontinue using Pan-Atlantic's service if the sea-land rates were increased above the Seatrain rates. This shipper and the others supporting Pan-Atlantic make no mention of the minimum weights attached to their sea-land and Seatrain rates, and as between sea-land and Seatrain the record does not justify the prescription of equal minimum weights. Seemingly, the same minima would not be practicable since sea-land shipments use trailer bodies as containers whereas Seatrain shipments move in railroad cars.

It is the position of the water carriers herein that the proposed TOFC rates would precipitate a cycle of destructive competition, contrary to the national transportation policy. Seatrain states that if the TOFC rates are permitted to become effective it will publish immediately rail-water-rail rates reflecting reasonable differentials under the TOFC rates; that Pan-Atlantic could then be expected to publish rates no higher than Seatrain's rates and made differentially under the TOFC rates; and that the net result would be a rate relationship comparable to that now existing but on a substantially depressed basis. It stresses, what appears to us a reasonable conclusion, that the rate-cutting activity probably would not stop even at that destructive level, and that quite certainly a further vicious cycle of rate cutting would ensue.

#### FOURTH SECTION APPLICATION No. 34227

Fourth Section Application No. 34227 requests authority to maintain the proposed reduced TOFC commodity rates between specified points in eastern territory, on the one hand, and Dallas and Fort Worth, on the other, over the short tariff routes without observing the long-and-short-haul provision of section 4. The rates which would be maintained from and to the higher-rated intermediate points are the present class or combination rates. The following are typical examples of the departures.

From Boston, Mass., to Dallas over the direct route composed of the lines of the Boston and Maine Railroad to

Mechanicsville, N. Y., The Delaware and Hudson Railroad Company to Binghamton, N. Y., the Erie Railroad Company to Huntington, Ind., the Wabash Railroad Company to East St. Louis, Ill., and the Missouri Pacific Railroad Company beyond, the distance is 1,965 miles, and the proposed rate on candy and confectionery is 214 cents. Over this route to Bald Knob, Ark., and Terrel, Tex., 1,543 and 1,930 miles, respectively, rates of 236 and 272 cents will be maintained. From Lancaster, Pa., to Dallas over the direct route composed of the lines of the Pennsylvania Railroad Company to East St. Louis, the Missouri Pacific to Texarkana, Tex., and The Texas and Pacific Railway Company beyond, the distance is 1,591 miles and the proposed rate 204 cents. Over this route to Arkadelphia, Ark., and Terrel, 1,311 and 1,555 miles, respectively, rates of 225 and 253 cents will be maintained.

The examples offered by the applicants indicate that the earnings over the direct routes would range from 21.8 to 31.6 mills a ton-mile, and from 39.2 to 47.4 cents per car-mile based on a single trailer per flat car, and 78.4 to 94.8 cents per car-mile based on two trailers per flat car.

While these earnings and the cost data previously discussed show that the rates generally would be reasonably compensatory, in view of the conclusions reached with respect to the justness and reasonableness of these proposed rates, the application will be denied.

#### I. & S. No. 6906

By schedules filed to become effective on April 3, 1958, and later, in these proceedings, Pan-Atlantic and the motor common-carrier participants in its tariffs proposed to establish approximately 94 commodity rates for the transportation in sea-land service of numerous commodities,<sup>7</sup> in trailer-

7. Sewer pipe, paper and paper bags, petroleum products, clay tile, bottle caps, calcium sulphate, iron oxide, titanium, dioxide toilet preparations, glass bottles, laundry sour, red lead, mortar color, printing paper, synthetic plastics, paper fabric bags, paper boxes, clay n.o.i., rosin, canned goods, petroleum, lumber, oak flooring, roofing, ammunition, beer, drain tile, wallboard, and paraffin wax.

load, multiple-trailerload, and volume quantities, from, to, and between numerous points in the East, South, and Southwest. Upon protest of rail carriers in these areas, the operation of the schedules was suspended to and including November 2, 1958, and later, after which the schedules became effective.

The evidence used in computing costs in the instant proceedings is similar to that submitted in I. & S. No. M-10415. Our Cost Finding Section has considered this evidence and has restated the sea-land costs before us. The rationale of the restatement is substantially the same as that in I. & S. No. M-10415. The conclusion is that the proposed rates equal or exceed the out-of-pocket costs for 85 of the listed 94 movements. Representative proposed rates and restated costs are shown in appendix C hereto.

In the restatement of costs, there are nine listed rates which yield less than the out-of-pocket cost. Pan-Atlantic states that it will seek authority to cancel two of these rates, both applying on petroleum products, from New Orleans to Miami and Melbourne, Fla., under investigation in I. & S. No. 6906. Of the remaining seven rates listed in the restatement as not yielding out-of-pocket costs, two are on paper and bags, one on glass bottles, two on synthetic plastics, and two on beer. The rates on paper and bags are from Advance and Hodge, La., to Miami, in I. & S. No. 6906 (109 cents, minimum 64,000 pounds, utilizing two trailers with 32,000 pounds each; out-of-pocket cost, 111 cents); the rate on glass bottles is from Lancaster, N. Y., to Miami, in I. & S. No. M-11077 (184 cents, minimum 22,000 pounds; out-of-pocket cost, 186 cents); the rates on synthetic plastics are from Buffalo, N. Y., to Dallas and Fort Worth, in I. & S. No. M-11077 (195 cents, minimum 30,000 pounds; out-of-pocket costs, 199 and 201 cents, respectively); and the rates on beer are from Philadelphia to Daytona Beach, Fla., in I. & S. No. M-11259 (99 and 85 cents, minima 30,000 and 40,000 pounds, respectively; out-of-pocket costs, 119 and 106 cents).

Only the sea-land rates of Pan-Atlantic, and not the all-rail boxcar rates, are here under investigation. The rail carriers urge that regardless of whether we approve or disapprove the sea-land rates, there should be no prescription of a relationship between the sea-land and the all-rail rates. The rail carriers indicate that if the instant rates are approved, they may counter with reduced rates of their own.

Based on the costs before us, the sea-land rates here in issue generally, with the exception of the nine rates previously noted, are compensatory. The other listed 85 rates exceed out-of-pocket costs, and about 42 percent of them cover fully-distributed costs.

#### I. & S. No. M-11375

By schedules filed to become effective on June 9, 1958, and later, the respondents, Pan-Atlantic and the motor-carrier participants in its tariffs, proposed to establish 65 or more reduced commodity rates for the transportation in sea-land service of numerous commodities,\* in trailerload, multiple-trailerload, and volume quantities, from and to points in the East, South, and Southwest. Upon protests of rail carriers and others, the operation of the schedules was suspended to and including January 8, 1959, in the title proceeding, and later in some of the embraced proceedings, after which dates the schedules became effective.

The proposed rates, with certain exceptions, reflect differentials, approximating 5 percent to and from interior points and 7 percent to and from the ports, under the overland rates of rail or motor carriers. In no instance is Pan-Atlantic participating in traffic in competition with the rail or motor carriers except at rates differentially under the all-rail or all-motor rates. For example, when in 1958

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8. Including copper cable, tires, wallboard, woodenware, chemicals, denatured alcohol, paint, floor covering, aluminum foil, glue, insulating material, synthetic plastics, printed matter, skates, iron or steel bars, petroleum oil, building paper, roofing and roofing material, aluminum articles, aluminum junk, iron or steel castings, and machinery.



a differential on canned foodstuffs from Crystal City, Tex., to Swedesboro, N. J., was removed by a reduction in the rail rate, all of the traffic, which had been handled previously by Pan-Atlantic, was diverted to the railroads.

The cost evidence submitted in these proceedings has also been considered by our Cost Finding Section. Appendix D hereto contains examples of the costs of record as restated by that section in accordance with accepted cost-finding principles. The cost evidence shows that none of the sea-land rates in issue are below out-of-pocket cost, and in most instances the rates exceed fully-distributed cost.

In most instances on this traffic, according to the cost data of record, the railroads are the low-cost agency on an out-of-pocket basis, especially where the higher minimum weights are used. For example, on copper cable moving from New Haven, Conn., to Tampa, Fla., when the traffic moves at minimum weights of 30,000 pounds, Pan-Atlantic's restated costs are 97 cents per 100 pounds and the rail restated costs are 101 cents, so that Pan-Atlantic's costs are 96 percent of the rail costs. However, when the 60,000-pound minimum is used, Pan-Atlantic's costs remain at 97 cents because of the necessity of using two trailer boxes, while the rail costs decrease to 67 cents, or a ratio of sea-land to rail of 145 percent. No rail fully-distributed costs are on this record, nor was any attempt made to show all-motor costs.

During September 1958, the Coast Guard reclassified the dead-weight tonnage of the Pan-Atlantic vessels. The tonnage capacity of each vessel was increased by 500 tons, which according to Pan-Atlantic results in a substantial reduction in vessel cost per ton carried. We find that the sea-land rates equal or exceed the out-of-pocket costs for all movements, and are compensatory.

The protestants indicate that if the instant rates are approved, they intend to counter with reduced rates of their own.

## SUMMARY AND CONCLUSIONS

The sea-land, Seatrain, and TOFC rates here under investigation, with the few exceptions noted, appear to be compensatory. Many of them are above the fully-distributed costs shown, and, with the exceptions mentioned, all are above the out-of-pocket costs. The next, and the most important, question is whether these rates constitute destructive competition.

As related, the sea-land rates of Pan-Atlantic, in general, are lower than the corresponding rail rates, but by lesser amounts than differentials which existed by reason of the rates formerly maintained in connection with Pan-Atlantic's break-bulk service. At the same time, Pan-Atlantic's costs of the sea-land operation are from \$10 to \$12 a ton less than the cost under its break-bulk service.

Unquestionably, Pan-Atlantic's former break-bulk service was inferior to rail service. While many of the service disadvantages of the former break-bulk operation have been overcome by the sea-land operation, the preponderance of the testimony on these records is to the effect that most of the shippers prefer rail service to sea-land service except at lower rates for the latter. The records show no instance of any traffic moving by sea-land except at rates lower than the rail rates. We must conclude, therefore, that, in order to attract traffic, the sea-land service must establish rates somewhat below those of the rail carriers from and to the same points, and that Seatrain, whose rates and service are comparable to Pan-Atlantic's, is in a like position.

In the prior report in I. & S. No. M-10415 the division concluded that the proposed sea-land rates there under investigation would not be competitively destructive. As explained, the rail carriers do not attack that conclusion in their petition for reconsideration. We agree with the division, and we further conclude that the compensatory sea-land and Seatrain rates under investigation in the other proceedings also are not competitively destructive.



The proposed TOFC rates would be on a parity with the current sea-land rates, and, as indicated, are on the level of the motor common-carrier rates, based on the assumption that the TOFC and sea-land services have many of the characteristics of overland motor service. The motor carriers agree that a differential of sea-land rates under TOFC rates is justified. They are not prepared to suggest what that differential should be.

Pan-Atlantic and Seatrains contend that the proposed TOFC rates are unlawful because they would wipe out existing differentials and place the rail rates on the exact level of the sea-land and Seatrains rates. They insist that they must have rates lower than the rail rates if they are to move any substantial volume of this traffic.

All of Pan-Atlantic's traffic is competitive. On the other hand, Pan-Atlantic argues that the traffic which the railroads seek to retain or obtain in competition with Pan-Atlantic and Seatrains constitutes only a small part of their total traffic in the areas here affected, and that because of the volume of their noncompetitive traffic the railroads could, if permitted to do so, reduce their sea-land competitive rates to an out-of-pocket cost basis and make up most or all of the difference between that level and their fully-distributed costs on other traffic.

Pan-Atlantic, if it is to continue in operation, must recover its fully-distributed costs on the overall sea-land operations. Thus, if the differentially-lower rates which Pan-Atlantic must maintain to attract traffic in competition with the railroads were forced by such competition to be reduced to a point where, in general, they failed to recover operating costs plus a reasonable return, obviously its sea-land operations would become unprofitable and their continuance would be threatened.

Pan-Atlantic insists that under the act, interpreted in the light of the national transportation policy, we are required to prescribe a differential in its favor in order to preserve its operations as an essential part of the national

transportation system. It seeks a minimum differential in its favor of 10 percent under the rail TOFC rates, and concedes that its differential under the rail boxcar rates should be somewhat less. It states that experience has shown, generally speaking, that a 5 percent differential, sea-land under rail boxcar rates, is the minimum that will permit sea-land participation in the traffic.

Seatrain asks that whatever action we may take in prescribing a relation between the sea-land and rail rates, such action be given effect through the medium of a minimum rate order which will preserve the differentials now enjoyed by Seatrain in competition with the railroads.

The restated sea-land costs, both out-of-pocket and fully-distributed, are below the restated TOFC costs for all movements on which the proposed TOFC rates would apply, as computed for flat cars with a single trailer, and also for all but two of the 66 movements computed for two trailers on a TTX car. Comparing the rail boxcar service with sea-land, on some of this traffic, particularly port-to-port traffic and certain other traffic subject to the higher single-trailer minima, Pan-Atlantic is shown as the low-cost agency; on the other traffic, the railroads' costs appear to be lower. No witness hazarded a guess as to the probable division of the TOFC traffic under the proposed rates as between single-trailer and two-trailer movements. The rail costs of transporting TOFC shipments would of course vary considerably depending upon whether a flat car carrying only one trailer or a TTX car carrying two trailers were used; the choice of the equipment used would rest entirely with the railroads. Also, a shift from one port to another by Pan-Atlantic, which is frequently required by the peculiarities of the service, can effect a substantial change in the water-carrier costs on any of this traffic. Moreover, we do not have before us the rail costs as to many of these rates; and, as discussed in detail in the prior report, other considerations enter into the factor of inherent advantages. For the foregoing reasons, we can not determine on these records

where the inherent advantages may lie as to any of the rates in issue. We must recognize, also, that cost is only one of the elements which may appropriately be considered in passing upon the lawfulness of rates. In the exceptional circumstances here presented, other considerations, herein discussed, appear to us determinative of the issues.

In dealing with competitive rates, section 15a(3) prohibits us from holding the rates of a carrier to a particular level to protect the traffic of another mode. That prohibition, however, is qualified by the words "giving due consideration to the objectives of the national transportation policy declared in this Act." Clearly, the prohibition does not mean that rates which fail to meet other standards of lawfulness in the act, interpreted in the light of the national transportation policy, must be approved because an effect of their disapproval might be to protect the traffic of a competing mode. It is the declared national transportation policy, among other things, to provide for fair and impartial regulation of all modes of transportation subject to the Interstate Commerce Act, so administered as to recognize and preserve the inherent advantages of each, to promote safe, adequate, economical, and efficient service, and foster sound economic conditions in transportation and among the several carriers, *all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense.*

Since the enactment of section 15a(3) in 1958, we have had occasion to apply its provisions in a number of situations where rate reductions motivated by intermode competition were under consideration. We have refused to condemn the compensatory rates of carriers even though they were reduced below the prevailing level of the rates of competing modes, in the absence of a showing of unlawfulness under the act. See *Lumber, California and Oregon to California and Arizona*, 308 I. C. C. 345; *Paint and Re-*

*lated Articles in Official Territory*, 308 I. C. C. 439; *Sugar to Ohio River Crossings*, 308 I. C. C. 167; *Magnesium from Velasco, Tex., to East St. Louis, Ill.*, 309 I. C. C. 659. ~~None~~ None of the prior proceedings, however, presented a situation such as that before us here. The reduced rates of the railroads here under consideration are an initial step in an overall program of rate reductions that can fairly be said to threaten the continued operation, and thus the continued existence, of the coastwise water-carrier industry generally.

The record shows that where there were 19 companies with 139 vessels operating in the Atlantic-Gulf coastwise trade prior to World War II, today only two deep-water common carriers are operating in that trade with seven vessels, three by Pan-Atlantic and four by Seatrain. And where approximately 8.5 million tons annually were transported in the Atlantic-Gulf coastwise trade prior to the war, the present capacity of the remaining vessels in that trade is only 1.8 million tons. In 1959, Pan-Atlantic's total tonnage, coastwise and Puerto Rican trades, approximated 600,000 tons, as compared with over 1,000,000 tons coastwise alone in 1941. At the outset of World War II, all of the vessels employed in the deep-water coastwise trade were taken over by the Federal government for national defense.

The importance of coastwise shipping for national defense purposes has been emphasized repeatedly from various governmental sources. Thus, the United States Maritime Administration in "A Review of the Coastwise and Intercoastal Shipping Trades" published in December 1955, stated, in part:

In short the crux of the coastwise-intercoastal shipping problem is in the break-bulk dry-cargo trade today as it was before the war. The re-establishment and preservation of this segment of the domestic fleet is of vital national defense importance if the immediate needs of a future grave national emergency are to be

met. It is obvious that the ready availability of ships employed in domestic operations may well be a critical factor in any initial military or civil defense operation of the United States occasioned by a future atomic or thermo-nuclear war.

Further, an economically sound, low-cost domestic fleet will continue to make important contributions to the economic growth and development of the United States as a whole and a balanced national transportation system in particular.

In a report on domestic water carriers by the Committee on Interstate and Foreign Commerce of the Senate, entitled "1950 Merchant Marine Study and Investigation," made pursuant to Senate Resolution 50, Report 2494, 81st Congress, 2d Session,<sup>9</sup> that Committee said, at page 17:

One fact stands out, and that is the essentiality of coastal water service to shippers the country over.

\* \* \*

Finally, of course, is the importance to national defense of having domestic tonnage readily available in an emergency. This fact must not be overlooked in discussing the importance of this segment of the merchant marine in terms of national policy.

As indicated in the next preceding quotation, coastwise shipping is important also for general public use as an integral part of the national transportation system. The following taken from *War Shipping Administration T. A. Application*, 260 I. C. C. 589, 591 (1945), is true today:

The dependency of ports and coastal areas upon the existence of water transportation is well known. The economy of such areas, to a large extent, is founded upon the availability of such transportation, without which a large part of their economy would not have

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9. Quoted by the Merchant Marine and Fisheries Subcommittee of the Senate Committee on Interstate and Foreign Commerce in its report, dated August 29, 1960, on the "Decline of the Coastwise and Intercoastal Shipping Industry," 86th Congress, 2d Session.

been developed, and with the discontinuance of which a large part of their normal economic activity will cease to exist.

Section 307(f) of the act provides that in prescribing just and reasonable rates by water, we shall give due consideration, among other factors, to the effect of the rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient water transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable water carriers, under honest, economical, and efficient management, to provide such service. The provisions of this paragraph are similar to those in sections 15a(2) and 216(i). Also, section 305(c) provides that "Differences in the \* \* \* rates \* \* \* and practices of a water carrier in respect of water transportation from those in effect by a rail carrier in respect to rail transportation shall not be deemed to constitute \* \* \* an unfair or destructive competitive practice."

Section 307(d), in authorizing the Commission to establish through routes and joint rates in connection with water and rail carriers, provides that "where one of the carriers is a common carrier by water, the Commission shall prescribe such reasonable differentials as it may find to be justified between all-rail rates and the joint rates in connection with such common carrier by water." While this provision is not controlling here, where the rates by water under investigation were voluntarily established, and most of them apply in connection with a water carrier and motor carriers, nevertheless, considered with the other provisions of the act above mentioned, it appears indicative of the Congressional intent that, where necessary to permit an essential, efficiently-operated water carrier to participate in the economical movement of traffic, the service in connection with the water carrier should be accorded some advantage in the form of lower rates. This is so not only on traffic between the ports, but also to and from interior



points, for coastwise carriers can not survive on port-to-port traffic alone. As stated in *Dominion Rates from Eastern Ports to the Southwest*, 264 I. C. C. 551, 559:

The steamship lines plying between north Atlantic and Gulf ports must, in order to operate successfully, participate in the handling of traffic to and from interior points. In order to participate in such traffic, the rates over such lines must be on a lower level than those over all-rail routes.

There is no contention that the coastwise lines here before us are not efficiently operated. Shipper evidence on these records is indicative of a need by the general public for the services of those lines, and that they represent an important and essential part of a national transportation system adequate to meet the needs of the commerce of the United States and of the national defense. There is, of course, a limit beyond which these carriers cannot be expected to attract traffic from interior points at economical rates. We are satisfied that their rates here under investigation, except as noted in the findings herein, do not go beyond that limit.

In the circumstances presented here, we are of the opinion that the objectives of the national transportation policy require the establishment and maintenance of a differential relationship between the rates under investigation on sea-land and Seatrain service, on the one hand, and the rates of the rail carriers, on the other, which will allow these water carriers operating in the coastwise trade to maintain rates that will enable them to continue efficient and economical coastwise service.

It appears to us, however, that the 10 percent differential sought by Pan-Atlantic would be excessive. The differences between the sea-land and the all-rail services are not so marked as to require that wide a rate difference. In our judgment, the rail TOFC rates on the commodities from and to the points concerned in I. & S. No. 6834 should be maintained on a level no lower than 6 percent above



Pan-Atlantic's sea-land rates, so long as the latter are not increased above their present levels. While the matter of an appropriate differential for sea-land service or Seatrain service under rail boxcar service is not here directly in issue, it may be helpful for the future guidance of the parties to express our view that, as boxcar service is inferior to TOFC service, the differential under the boxcar rates should be somewhat less than 6 percent.

Upon reconsideration, in I. & S. No. M-10415 and the proceedings embraced therein we affirm the prior findings that 11 of the rates under investigation on the commodities from and to the points shown in footnote 4 of this report are not shown to be just and reasonable, and that the other rates under investigation are lawful.

In I. & S. Nos. 6906 and M-11375, and proceedings embraced therein, we find that nine of the rates under investigation, on the commodities from and to the points shown in footnote 10, are noncompensatory and thus are not shown to be just and reasonable, and that the other rates under investigation are lawful.

In No. 32313, we find that the sea-land rate of 216 cents, minimum 20,000 pounds, on paint and paint materials from Baltimore to Dallas and Fort Worth, is unjust and unreasonable, and that the other sea-land rates and the Seatrain rates under investigation are lawful.

In I. & S. No. 6834, we find that the proposed reduced TOFC rates are not shown to be just and reasonable, and the proposed schedules will be required to be canceled, without prejudice to the filing of new schedules in conformity with the conclusions herein. Since these proposed rates are not shown to be just and reasonable, the fourth section application for relief to establish such rates will be denied.

Appropriate orders will be entered.

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10. Paper and paper bags from Hodge and Advance, La., to Miami, Fla.; petroleum products from New Orleans, La., to Melbourne and Miami, Fla.; glass bottles from Lancaster, N. Y., to Miami; synthetic plastics from Buffalo, N. Y., to Dallas and Fort Worth, Tex.; and beer from Philadelphia, Pa., to Daytona Beach, Fla.

COMMISSIONER HUTCHINSON, *concurring*:

I am in general agreement with the majority report.

In I. & S. No. 6834, the majority concludes that on a fully distributed basis, sea-land is a lower cost service than TOFC. Thus the ultimate effect of approval of the schedules would be to allow rates of the high-cost carrier to gravitate to a level whereby the low-cost carrier will be forced to go below its full costs in order to participate in the traffic.

A regulated competitive mode of transport maintaining rates not in excess of maximum reasonableness should not publish reductions resulting in revenue losses, for the sole purpose of obtaining traffic being handled by another mode. Such proposals constitute, in my opinion, destructive competitive practices which the National Transportation Policy condemns.

I am not convinced, however, that a differential of 6 percent is warranted on this record, but since I do not believe the "without prejudice" finding constitutes an effective prescription of a differential, I concur in the majority decision.

COMMISSIONER McPHERSON, *concurring in part*:

I would approve all the rates which are compensatory but on this record I would not impose any differential.

COMMISSIONER FREAS, *whom CHAIRMAN WINCHELL and COMMISSIONER WEBB join, dissenting in part*:

My views concerning the issues presented in I. & S. No. M-10415 have been set forth in a separate expression to the prior report of Division 3 in this proceeding, 309 I. C. C. 587, 606. The same reasoning is in general applicable to the other proceedings embraced herein. I shall therefore confine my remarks to the additional points raised by

the parties and by the majority in its Summary and Conclusions.

With one possible exception, neither respondents nor protestants appear to dispute the basic concepts set forth in my prior expression, particularly those dealing with the guiding principles to be followed in competitive rate-making. The railroads do contend that these principles go too far and overlook a tremendous impetus which they would give to private carriage. Apparently the railroads believe that the effect of these principles would be to require the return of fully distributed costs in every instance. That anyone should place such a construction upon my prior expression was wholly unexpected. The views expressed dealt with the situation at hand which is limited to inter-mode competition between regulated carriers. The standards set forth in no way preclude action necessitated by either the existence or the threat of exempt transportation.

Pan-Atlantic merely asserts that my suggestion as to cancellation and refileing of rates in conformity with the guiding principles would not be "practicable" here. It contends that because of the strong conflict between the parties concerning the relative values or advantages of the respective services to the shipping public unavoidable litigation would in most instances follow such refileing. This contention is not directed to the principles involved but to the evidentiary facts. The determination of these factual issues would be relatively simple were it not for the broad scope of the proceedings here, which involve hundreds of different commodity rates. The burden of proof is on respondents; in the absence of a clear showing of representativeness, orderly regulatory processes preclude the approval of differentials in all instances upon justification only of some.

In support of its conclusion that rate differentials, rail over water, are warranted here the majority appears to rely heavily upon the national transportation policy. It is said

that the differentials are necessary in order to allow the coastwise lines to continue their essential service. Specifically the majority stated: "Shipper evidence on these records is indicative of a need by the general public for the services of those lines, and that they represent an important and essential part of a national transportation system adequate to meet the needs of the commerce of the United States and of the national defense." However, all that the record indicates in this regard is that although in certain instances shippers may consider the advantages or disadvantages of the respective services offered, the controlling factor in choosing between the involved modes of carriage is generally the level of the rates. There is no evidence here that either the commerce of the United States or the national defense would be hampered unless the water carriers, though not shown to have the inherent advantage in many instances, are given an artificial rate advantage. A reiteration of some of the language contained in the national transportation policy is in and of itself no substitute for essential supporting evidence. See *Pacific Inland Tariff Bureau v. United States*, 129 F. Supp. 472. Nor are there any subsidiary findings in the report to substantiate any of the specific differentials proposed by the water carriers or suggested by the majority.

The decision of the majority may well be taken to stand for the proposition that water carriers are ordinarily entitled to rate differentials regardless of the circumstances of the specific case. I do not read the statute to require as a matter of law, or even to permit, blanket protection from reasonable competition for the water carriers, or for that matter for any mode of transportation. Indeed, even the water carriers have not gone this far in their construction but have, in the last Congress, sought legislation to that effect.

**APPENDIX A**  
**RATES, COSTS, AND COST RATIOS**

	<i>Sea-Land</i>						<i>Trailer-on-Flat-Car</i>												<i>Ratios</i>			
	<i>Costs</i>				<i>Ratio, rate to costs</i>		<i>Costs</i>								<i>Ratio, rate to costs</i>				<i>SL to TOFC costs</i>			
	<i>OP</i>		<i>FD</i>		<i>OP</i>	<i>FD</i>	<i>OP</i>				<i>FD</i>				<i>OP</i>				<i>OP</i>		<i>FD</i>	
	<i>Min.</i>	<i>Rate</i>					<i>Min.</i>	<i>Rate</i>	<i>RR</i>	<i>TTX</i>	<i>RR</i>	<i>TTX</i>	<i>RR</i>	<i>TTX</i>	<i>RR</i>	<i>TTX</i>	<i>RR</i>	<i>TTX</i>	<i>RR</i>	<i>TTX</i>	<i>RR</i>	<i>TTX</i>
Ammunition, from New Haven, Conn.	30	299	138	175	217	171	30	299	214	186	259	231	140	161	115	129	64	74	68	76		
Candy or confec- tionery from Boston, Mass.	36	214	139	179	154	120	36	214	190	172	236	218	113	124	91	98	73	81	76	82		
Paint and paint materials from Jersey City, N. J.	36	190	111	137	171	139	36	190	182	166	225	209	104	114	84	91	61	67	61	66		
Printed matter from Phila., Pa.	23	273	172	212	159	129	23	273	250	204	292	246	109	134	93	111	69	84	73	86		
Wire goods, aluminum from York, Pa.	14	438	281	334	156	131	30	438	345	246	386	287	127	178	113	153	81	114	87	116		

SL is sea-land; TOFC is trailer-on-flat-car; TOFC rates are proposed; Min. is minimum weight in 1,000 pounds; ratios are in percents; OP is out-of-pocket; FD is fully-distributed; RR signifies railroad-owned flat cars with a capacity of one trailer; TTX signifies leased flat cars with a capacity of two trailers; destination of shipments is Dallas-Fort Worth.

## APPENDIX B

## RATIONALE OF COST FINDING SECTION

*Cost Evidence:*

Cost evidence relating to the trailer-on-flat-car service was introduced by the Southwestern rail carriers, Eastern rail carriers, and by the protestant, Pan-Atlantic Steamship Company. The Eastern rail carriers introduced a cost study for TOFC service based almost wholly on cost factors introduced by the Southwestern rail carriers. Since the cost evidence of the Southwestern rail carriers will be discussed in detail below, further comments on the Eastern rail carriers' cost evidence is considered unnecessary.

The Missouri Pacific Railroad Company introduced revenue and expense data intended to show that the proposed TOFC rates would produce compensative revenue when compared with the average revenue and operating expenses of carriers in the Central Western and Southwestern regions. The revenues and expenses were shown on a per-ton-mile and a per-car-mile basis for all traffic combined. In addition to not providing a separation of the expenses between terminal and line-haul and between out-of-pocket and fully distributed, these figures do not reflect the special characteristics of TOFC traffic, and therefore, are without probative value in measuring the compensatory nature of the proposed rates.

The Southwestern rail carriers originally presented cost data for the TOFC service with costs based on handling one trailer per flat car, two trailers per flat car, and with percentages of empty return of zero, 50 and 100 percent. Subsequently additional evidence was introduced which superseded the original presentation. This latter evidence was based on costs for the year 1956 from Statement No. 2-58 of the Bureau of Accounts, Cost Finding and Valuation, and adjusted by respondent to a level of May 1, 1958. It compares out-of-pocket costs with the proposed rates for

one trailer per car, for two trailers per car, and on a combined basis reflecting 75 percent two trailers per car and 25 percent one trailer per car. The empty return ratio used for the line-haul expense was 25 percent. The respondent considered the combined showing to be the most appropriate, although it conceded that such a performance was not presently attained. Based on respondent's cost presentation the proposed rates exceed out-of-pocket costs for all movements.

The protestant water carrier took many exceptions to respondent's cost presentation and restated the costs. A comparison of the proposed rates with the protestant's restated out-of-pocket costs showed most of the rates to be below out-of-pocket cost.

In order to more fully understand the cost elements involved herein a short description of the services rendered the TOFC traffic may be helpful. At point of origin the trailer is loaded at the shipper's dock and then moved to the ramp area of the originating railroad. The trailer is subsequently loaded onto the flat car and is tied down or made secure to the car. Upon completion of the loading the cars are switched from the ramp to the outbound train along with other types of cars. The train is then given a line-haul movement to the Western gateway where the TOFC cars are switched to the delivering railroad's ramp and the trailers are untied and removed therefrom. At the present time the TOFC cars are not interchanged between the railroads so that direct movement of the trailers is required for delivery to the connecting line. After delivery to the connecting carrier's ramp the trailers are again placed on flat cars and tied down and subsequently moved to final destinations, where the cars are again switched to a ramp, the trailers untied and removed, delivered to the consignee and unloaded, and returned to the railroad terminal. So far as these proceedings are concerned two types of cars are involved: one is a flat car of single trailer capacity which is equipped with tie-down devices; and the other is a car especially designed to hold two trailers with special hold-



down devices. The latter type of car is at present not owned by the railroads but is leased from a car company under mileage agreement and is referred to as a trailer-train car. The abbreviation of TTX will be used herein in referring to the two-trailer cars while the single-trailer cars will be referred to as R.R.-owned cars.

In view of the many points of controversy over the cost evidence in these proceedings each element of cost will be discussed individually below with the comments and evaluation by the Cost Finding Section immediately following each item.

(1) *Source and level of expense data:*

*Respondent:*

In its final cost presentation respondent based its rail costs on unit expenses shown in Statement No. 2-58 of the Bureau of Accounts, Cost Finding and Valuation, which showed costs for the year 1956 and also costs adjusted to a level of January 1, 1958. Respondent considered the costs as of January 1, 1958 to be overstated, and therefore used the 1956 costs adjusted to what it purported to be a May 1, 1958 level. This was accomplished as follows: The total operating expenses for the year 1957 were related to the total operating expenses for the year 1956 for the Eastern district and Western district separately. The percent of increase was found to be 1.57 percent for the Eastern district and .83 percent for the Western district. A cost-of-living adjustment of 4 cents per hour as of May 1, 1958 was applied to the total service hours for the year 1957, United States as a whole, and the resulting amount of increase was related to the total operating expenses for the year 1956 for the United States as a whole to produce an additional adjustment of 1.14 percent. The latter amount was added to the previous percentage increases for the Eastern and Western districts to produce total adjusting percentages of 2.71 percent for the Eastern district and 1.97 percent for the Western district. These percentage adjustments were ap-

plied to the expenses for 1956 by respondent to produce costs as of May 1, 1958.

Respondent showed costs on an out-of-pocket level only. It contends that the amount of additional revenue which a commodity should produce above out-of-pocket cost should be contingent upon what the traffic can bear rather than on an arbitrary prorate based on averages of all traffic. Therefore, it did not show fully distributed expense.

*Protestant:*

In its restatement of the rail costs in respondent's Exhibit No. 3 protestant used the costs for the year 1955 shown in Statement No. 1-57, issued by the Bureau of Accounts, Cost Finding and Valuation, and underlying working papers thereto. These costs were adjusted for wage and price levels to January 1, 1958, based on data shown by rail carriers in Ex Parte No. 212.

Protestant showed its costs both on an out-of-pocket and fully distributed basis. The out-of-pocket costs include 80 percent of the operating expenses, rents and taxes, excluding Federal income taxes, plus a return of 4 percent after Federal income taxes, and 50 percent of the road property and 100 percent of the equipment. The fully distributed costs include, in addition to the out-of-pocket costs, the remaining 20 percent of the operating expenses, rents and taxes, the passenger train and less-carload operating deficits and return of 4 percent after Federal income taxes on the property as a whole. The revenue needs over and above the out-of-pocket costs are given a prorate ton and ton-mile distribution over all revenue traffic without distinction as to kind or class.

*Cost Finding Section's comments:*

The method used by respondent to adjust the 1956 expenses to a May 1, 1958 level completely ignores the amount of traffic moving in the respective years because only the

total operating expenses and a cost-of-living adjustment are used to obtain the final adjusting factors. Respondent's method of adjustment is unacceptable.

The method of adjustment to a level of January 1, 1958 used by protestant assumes the same level of traffic for both periods but adjusts for the level of wages and prices. When the adjustment is made in this manner for only a one-year period there is small likelihood of error. However, when such adjustment is made for two years or more there is a possibility of overstatement since any increase in efficiency of operations is ignored.

In view of the fact that the sea-land costs reflect 1957 expenses and the TOFC pickup and delivery, tie-down cost and trailer rental expenses are based generally on the year 1957, the remaining TOFC expenses should also reflect a level for the year 1957. Accordingly the Cost Finding Section believes that the costs shown in its Statement No. 2-58, which are based on the year 1956 operations with adjustment to reflect wage and price levels as of January 1, 1958, are appropriate for use herein and these costs have been used in the restatement of respondent's and protestant's cost evidence. (A check of the costs shown in Cost Finding Section's Statement No. 5-58, which shows costs based on expenses for the year 1957, indicates very close agreement between those costs and the costs as of January 1, 1958 shown in Statement No. 2-58. The costs in Statement No. 5-58 would have been used in the Cost Finding Section's restatement except for the fact that this statement is not of record.) The out-of-pocket cost is the significant measure as to whether or not a rate is compensatory, but for comparative purposes we have also supplied the fully distributed costs in our restatement.

(2) *Switching at origin and destination:*

*Respondent:*

For the cost of switching at the TOFC ramps respondent used one-third of the territorial average switching time.

The factor of one-third was based on data furnished by the Pennsylvania and the Baltimore and Ohio Railroads in the East, and the Texas and New Orleans, Texas and Pacific, St. Louis-Southwestern and Missouri Pacific Railroads in the Southwest. In computing the switching expense per car respondent included an allowance of 25 percent for switching empty cars.

*Protestant:*

Protestant contended that the data supplied to respondent by the various railroads were deficient in that they did not make allowance for switching of the empty car or for non-productive time of the yard locomotives. Protestant stated that the switching data used by respondent was, in some instances, based on estimates and it contends that a detailed study should have been made to determine the switching time of the TOFC traffic. The protestant restated the switching minutes to include an allowance for switching of empty cars equal to the number of loaded cars and for non-productive time. In the Eastern district protestant's restated figure amounted to 12.9 minutes per car which, when related to the territorial average of 30 minutes per car, produced a ratio of 43 percent. Protestant used 45 percent of the territorial average in its restatement. In the Western district protestant used a restated figure of 16.4 minutes per car which, when compared with the total average of 26 minutes per car, produced a ratio of 63 percent. Protestant used a ratio of 65 percent in its restatement.

*Cost Finding Section's comments:*

We believe that respondent should have made detailed switching studies to determine the switching minutes per car for the TOFC traffic. In its restatement of respondent's switching minutes for the Eastern district, the protestant used only the minutes for the Pennsylvania Railroad at Kearney, New Jersey, Pittsburgh, and Philadelphia, and

for the Baltimore and Ohio at Philadelphia. It ignored the time at St. Louis of 2.1 minutes per car submitted by the Pennsylvania Railroad in a letter to protestant under date of March 25, 1958, which is part of the working papers that parties agreed could be used. When this time is taken into account and adjusted for empty and non-productive time, the average switching minutes in the Eastern district is reduced from 12.9 minutes to 11.4 minutes. The Cost Finding Section does not agree with protestant's use of 100 percent allowance for empty switch which is normal for other than boxcar traffic. Once the loaded TOFC cars have been placed in the ramp there is no need to switch them away from the ramp until they are to be made up into a returning train except in those instances where the capacity of the ramp is limited to less than the total number of cars received. Except for reference to the four-car capacity of the Baltimore and Ohio TOFC ramp at Philadelphia, the record does not provide evidence as to this necessity and, in the absence thereof, the Cost Finding Section believes that an allowance for switching empty cars equal to the amount of empty movement that is present in the line-haul operation is appropriate. Therefore, we have adjusted protestant's switching minutes to reflect 25 percent empty switching in the Eastern district and 50 percent empty switching in the Western district. The use of these empty return ratios is discussed in a subsequent item. The adjusted switching minutes per car compute to 7.13 minutes in the East and 12.30 minutes in the West. When related to the territorial average minutes per car of 30.6 in the East and 26.7 in the West shown in Statement No. 2-58, the ratio of TOFC switching minutes to the territorial average becomes 23 percent for the East and 46 percent for the West.

(3) *Freight-train car costs:*

*Respondent:*

Respondent used a ratio of 45 percent of the territorial average for the freight-train car costs of railroad-owned

cars. This was based on an average detention at origin and destination combined of 1.7 days as compared to the territorial average of 3.75 days. Respondent made no distinction between railroad-owned cars and privately owned cars.

*Protestant:*

Protestant also used a ratio of 45 percent of the territorial average for railroad-owned cars. The protestant developed the rental expense per car-mile for the TTX cars separately and the freight-train car costs for these cars is reflected in the line-haul expense.

*Cost Finding Section's comments:*

In its restatement of the costs the Cost Finding Section has used 45 percent of the territorial average for the TOFC freight-train costs for railroad-owned cars and has used protestant's treatment for the TTX cars.

(4) *Carload station clerical expense:*

*Respondent:*

Respondent included carload station clerical expense based on 50 percent of the territorial average for the East and for the West.

*Protestant:*

Protestant included this expense in total for each territory.

*Cost Finding Section's comments:*

In view of the fact that the TOFC traffic is interchanged between the Eastern district and Western district and would move on through billing respondent's treatment is proper and has been followed in the Cost Finding Section's restatement.

(5) *Loss and damage expense:**Respondent:*

Respondent included the territorial loss and damage clerical expense and the loss and damage claim payments based on the United States average for all other manufacturers and miscellaneous articles and for alcoholic beverages or liquor separately.

*Protestant:*

Protestant also included loss and damage clerical expense and loss and damage claim payments except that protestant included the loss and damage claim payments for each territory rather than once for the entire movement.

*Cost Finding Section's comments:*

In obtaining the loss and damage clerical expense from the carload unit cost sheets protestant used the expense per ton shown therein for an expense per hundredweight. Protestant's expenses of .599 cent for the Eastern district and 1.472 cents for the Western district should have been .030 cent and .074 cent, respectively. The loss and damage claim payments should have been included only once for the entire movement since these figures are based on United States averages without regard to length of haul. The loss and damage clerical expense and the loss and damage claim payments have been included correctly in our restatement.

(6) *Interchange expense:**Respondent:*

The costs from Statement No. 2-58 include interchange expense in the line-haul expense based on a cost per car-mile. The statement provides for eliminating the interchange expense per car-mile and stating it on a per-interchange basis where such treatment is desired. Respondent has availed itself of this option and has included inter-



change expense based on 1.5 interchanges per loaded move in the East and .5 interchange in the West, subsequently increased for the empty movement. Over-the-street trailer interchange cost at the gateway point between Eastern and Western territories is included separately. Respondent contends that interchanges between certain carriers do not entail the switching and cost normally associated with interchange service and that they are merely paper transactions for division of revenue purposes. This would be true for interchanges between the Missouri Pacific and Texas and Pacific, the Atchison, Topeka and Santa Fe and the Gulf, Colorado and Santa Fe and the Kansas City Southern and Louisiana and Arkansas Railroads, and would also be true of certain interchanges in the East. Respondent stated that in the Western district it could not foresee any interchanges other than the so-called paper interchanges of TOFC traffic destined to Dallas or Fort Worth as between the Western district carriers, since the carriers named above provide direct routes between the gateways and Dallas and Fort Worth.

*Protestant:*

Protestant takes exception to respondent's reduction of the number of interchanges. It contends that even though complete switching service may not be required for those points referred to as paper interchanges there is still some cost associated with such service which should be included. In developing the line-haul cost the protestant has used both a shortest route and a longest route over actual rail lines and has included the expense for the actual number of interchanges required over each, including so-called paper interchanges.

*Cost Finding Section's comments:*

Respondent is correct in its contention that the cost for a paper interchange is considerably less than the cost for an interchange where normal switching is involved. However,

the elimination of the entire cost for the paper interchanges is not considered proper, considering the fact that the interchange costs in Statement No. 2-58 are based on all types of interchanges as reported by the carriers. Thus, if the cost for paper interchanges were to be excluded the remaining interchange cost would have to be based on the expense per actual interchange which would be somewhat higher than the cost shown in Statement No. 2-58.

Protestant is wrong in including an interchange expense for the transfer of cars between the A. T. & S. F. and the G. C. & S. F. railroads. Because these two roads operate and report as a system the transfer of cars between them is not reported as an interchange. The expense for the transfer is reflected as intertrain or intratrain switching which protestant has included fully on a car-mile basis.

In its restatement the Cost Finding Section has included the average interchange costs expressed on a car-mile basis with the line-haul expenses. Since the interchange at the gateways between the East and West is performed by interchange of the trailer only and not of the rail car, a reduction equivalent to one-half the cost of a full interchange has been applied to the terminal costs in each territory. The effect of this treatment is to include roughly 0.6 interchange for a 900-mile haul in the West and from 1.8 to 2.6 interchanges for hauls of 900 to 1,200 miles, respectively, in the East.

(7) *Intertrain and intratrain switching:*

*Respondent:*

Respondent included intertrain and intratrain switching on a per car-mile basis but included only 50 percent of the total shown in Statement No. 2-58. The use of 50 percent of the territorial average was not based on any special studies made by respondent but was based on respondent's belief that the trains in which the TOFC traffic moves are subject to less than average switching en route.

***Protestant:***

Protestant included the intertrain and intratrain switching expense on the territorial average basis without reduction.

***Cost Finding Section's comments:***

In view of the fact that respondent failed to introduce evidence showing that the TOFC traffic actually receives less than the average intertrain and intratrain switching the use of the territorial average expense for this service is considered to be proper and has been included in the Cost Finding Section's restatement.

**(8) *Trailer rental expense:******Respondent:***

Respondent based its costs for trailer rental on an average charge of \$4.00 per day for a one-day period of 6.7 days (round-trip 13.4 days) plus an allowance for 25 percent empty return. This amounted to a total cost of \$33.50 per loaded trailer.

***Protestant:***

The protestant stated that the elapsed time used by respondent did not take into consideration the fact that trailers may be idle over the week-end, and that there might not be 100 percent utilization of the trailers; therefore, it based its cost on a 14-day round-trip or seven days one-way plus an allowance for empty return. Based on a rental cost of \$4.00 per day this produced a cost of \$44.80.

***Cost Finding Section's comments:***

Testimony of record indicates that the running time between origin and destination would average 5 days, or 10 days for the round trip. An allowance of two days' time at the origin and at destination would appear to be reasonable.

Therefore, in its restatement the Cost Finding Section has used an allowance for trailer rental cost based on a 14-day round trip adjusted for empty return instead of a 13.4-day round trip by respondent. The trailer rental cost thus computed amounts to \$38.50 per loaded trailer. The allowance for empty return for trailer rental amounting to 37.5 percent is the average of 25 percent empty return in the East and 50 percent in the West. These percentages are discussed subsequently.

(9) *Trailer interchange expense:*

*Respondent:*

Respondent based its costs for the over-the-street interchange of the trailer at the gateway between East and West on figures furnished by the Baltimore and Ohio and Pennsylvania Railroads, the average of which computed to \$5.25 per hour. Allowing one hour for the interchange and adjusting for 25 percent empty return, respondent computed a total of \$6.56 per loaded trailer for the interchange.

*Protestant:*

Protestant based its expense on figures furnished by the Pennsylvania Railroad, Missouri Pacific and Baltimore and Ohio and included allowance for 100 percent empty movement. A figure of \$24.90 was included for the Baltimore and Ohio, which combined with the amount of \$11.28 for the Pennsylvania Railroad and \$15.76 for the Missouri Pacific Railroad, produced an average of \$17.31 per loaded trailer.

*Cost Finding Section's comments:*

The figure of \$12.45, excluding allowance for empty, as used by protestant for trailer interchange for the Baltimore and Ohio, appears to be excessive when compared with respondent's figure of \$4.85. The record does not provide

information as to this discrepancy, therefore, the Cost Finding Section has used respondent's figure of \$4.85 in its restatement. Protestant showed a figure of \$7.88 for the Missouri Pacific Railroad based on 1.5 hours at a cost of \$5.25 per hour. This latter figure has been included with respondent's figure to produce an average of \$6.12. When the latter amount is adjusted for an empty return amounting to 50 percent, a total cost of \$9.18 per trailer interchange is obtained. The latter figure is used in the Cost Finding Section's restatement.

(10) *Trailer tie-down and untie cost:*

*Respondent:*

Respondent used a basic cost for placing the trailers on the car and securing them and for releasing them and removing them from the cars of \$9.00 per trailer in the East and \$8.00 per trailer in the West. These figures were subsequently adjusted for 25 percent empty return giving total costs of \$11.25 per trailer in the East and \$10.00 per trailer in the West.

*Protestant:*

After adjusting the figures furnished to respondent by the various railroads for a clerical cost item protestant used figures of \$9.60 per trailer in the East and \$8.50 in the West for the trailer train cars, and \$24.84 in the East and \$8.50 in the Western district for railroad-owned cars.

*Cost Finding Section's comments:*

It was brought out in the record that the figures used by the protestant for tie-down costs in the Eastern district were based on figures furnished by the Baltimore and Ohio which included not only the service at the ramp but the movement of the trailers between the ramp and shipper or consignee. In order to correct for this overstatement by

protestant the Cost Finding Section has substituted the cost of \$9.60 as used by protestant for trailer train cars for the \$24.84 it showed for railroad-owned cars in the Eastern district. In the Western district the Cost Finding Section has used protestant's figure of \$8.50 for both railroad-owned and TTX cars. After adjustment for the respective empty return allowances the total cost per trailer becomes \$12.00 in the East and \$12.75 in the West.

(11) *Pickup and delivery expenses:*

*Respondent:*

The pickup and delivery costs include the movement of the empty trailer from the carrier's motor terminal to the shipper's dock, the loading of the trailer and the return of the loaded trailer to the ramp at the origin point, and the movement of the loaded trailer from the ramp at destination to the consignee's dock, unloading, and the return of the empty trailer to the ramp or to the carrier's motor terminal. Based on data furnished by the participating railroads respondent developed costs of \$9.00 per load in the East and \$6.90 per load in the West for the movement of trailers between the ramps and shipper's and consignee's docks. The loading and unloading expense used by respondent was 12.8 cents per hundredweight in the East and 11.3 cents per hundredweight in the West.

*Cost Finding Section's comments:*

The protestant used the respondent's figures in its cost presentation and the Cost Finding Section has done likewise in its restatement.

(12) *Weight of train for TOFC traffic:*

*Respondent:*

Respondent based its line-haul costs on those for through trains without adjustment for any reduction in the

weight of the train for expedited service. Respondent contends that the TOFC traffic is generally handled in regularly scheduled through trains and thus should reflect the cost of through train operations.

*Protestant:*

Protestant computed its line-haul cost of the TOFC traffic based on through train costs but with the weight of the train reduced by 25 percent. Protestant contends that the TOFC traffic moves in manifest trains and receives expedited service, and that such manifest trains normally operate with tonnage ratings which are from one-third to one-fourth less than other through trains because of the speed at which these trains are operated. It also cited movement by the Pennsylvania Railroad of the TOFC traffic from New York to Philadelphia with only 10 or 12 cars in a train. It also stated that the Baltimore and Ohio trains in which the TOFC traffic is handled have tonnage ratings that have 25 percent to 30 percent less traffic than other through trains. The effect of protestant's treatment is to increase the gross-ton-mile portion of the line-haul expense by roughly five percent in the Eastern district and by three percent in the Western district.

*Cost Finding Section's comments:*

Although it may be true that the TOFC traffic may receive expedited service in less than average weight trains in some instances protestant has not shown this to be true generally. With regard to the movement by the Pennsylvania Railroad of the TOFC traffic between New York and Philadelphia in small trains this movement comprises only a small part of the total movement from Eastern points to the Southwest and it cannot be assumed that because such movement occurs over a short distance the same would be true for the remainder of the haul. In addition, the effect of protestant's adjustment on the total line-haul expense is



negligible. In the absence of special studies which would show the actual average weights of trains in which the TOFC traffic is handled, the Cost Finding Section believes that the use of the through train average cost is proper and this has been used in its restatement.

(13) *Tare Weight of cars and trailers:*

*Respondent:*

Respondent made no adjustment in its costs for the difference in tare weights of the cars used for TOFC service from the tare weight of ordinary flat cars. Also, it made no adjustment for the difference in weight for flat cars of two-trailer capacity from those of one-trailer capacity. In addition, it failed to include the tare weight of trailers in computing its expenses. It also failed to distinguish between railroad-owned cars and cars rented on a mileage basis.

*Protestant:*

Protestant developed its costs for railroad-owned cars and for those cars rented on a mileage basis (TTX cars) separately. Based on figures furnished by several railroads concerned with the TOFC traffic it determined that the tare weight for railroad-owned cars was 55,200 pounds before addition of the tare weight of the trailer. After addition of the 11,500 pounds average tare weight of a trailer the total tare weight of the railroad-owned car becomes 66,700 pounds. For the TTX cars it determined the average weight to be approximately 78,000 pounds before addition of the trailer tare weight. Based on information furnished by the railroads protestant determined that in the Eastern district the TTX cars were loaded with an average of 1.7 trailers per car and in the Western district the TTX cars are operated with an average of 1.45 trailers per car. The total tare weight of the TTX cars and trailers computes to

97,550 pounds in the Eastern district and 94,675 pounds in the Western district.

*Cost Finding Section's comments:*

The respondent is in error in not recognizing the difference in tare weights between the type of cars and in not making allowance for the additional tare weight of the trailers. The use by protestant of the average number of trailers per car for the TTX cars is also considered to be proper because this reflects the average utilization of the cars. The Cost Finding Section has used protestant's tare weights in its restatement except for a reduction of 800 pounds in the tare weight of TTX cars based on information in the working papers. It has used average number of trailers in the East of 1.7 trailers per TTX car and 1.5 trailers per TTX car in the Western district in its restatement.

(14) *Net load per TTX car:*

*Respondent:*

Respondent assumed a net load for cars carrying two trailers of twice the minimum weight per shipment.

*Protestant:*

The protestant developed the net load for TTX cars by adding to the minimum weight per shipment an amount equal to .7 of an average weight per shipment taken as 30,000 pounds in the East and .45 of 30,000 pounds in the Western district. The figures of .7 and .45 are derived from the average number of loaded trailers handled on TTX cars as described in item 13 above.

*Cost Finding Section's comments:*

The use of twice the minimum weight by respondent is incorrect since it overlooks the fact that a trailer of one

minimum weight may be handled with a trailer carrying an entirely different load on the same flat car and also ignores the fact that the average utilization of the TTX cars appears to be less than the maximum possible of two trailers per car. The Cost Finding Section has used protestant's procedure except that it has rounded off the figure of .45 to .50.

(15) *Empty return ratio:*

*Respondent:*

Respondent developed its line-haul expenses using an allowance for empty return of 25 percent for the ratio of empty car-miles to loaded car-miles. This figure was based on judgment and reflects a long range viewpoint. It does not actually represent the empty return ratio experienced at the time the evidence was placed on record. Respondent feels that the figure of 25 percent is a reasonable figure to expect considering the increasing use of TOFC service.

*Protestant:*

Based on information furnished by the participating railroads protestant used ratios of empty to loaded TOFC car-miles of 60 percent for railroad-owned cars in both the East and West, and 23 percent in the East and 100 percent in the West for TTX cars.

*Cost Finding Section's comments:*

An examination of the working papers shows that in the Eastern district the Baltimore and Ohio showed no empty trailer movement on its own cars in either direction during the month of January 1958. During the same month the Pennsylvania Railroad showed an empty return of 23 percent for its TTX cars. Based on these showings the Cost Finding Section feels that use of a ratio of empty to loaded car-miles of 25 percent in the Eastern district

for both railroad-owned and for TTX cars is not unreasonable, and it has used this ratio in its restatement. The working papers also show that in the Western district the Texas and New Orleans Railroad showed a ratio of empty to loaded car-miles of 49 percent for the months of October, November, and December of 1957, and January 1958 for railroad-owned cars. Other carriers in the Western district showed a ratio of 100 percent empty return for both railroad-owned cars and TTX cars. The Cost Finding Section believes that the high empty return ratios experienced in the Western district will not remain static but will be reduced as the TOFC traffic develops. The TOFC service concerned herein is in reality a substitute for boxcar service. It is reasonable to assume, therefore, that the empty return ratio would approach that of boxcars. Statement No. 2-58 shows the ratio of empty to loaded car-miles for carload boxcar traffic to be 36 percent. The use of an empty return ratio of 50 percent for the Western district is, therefore, considered to be reasonable and this has been used in our restatement.

(16) *Line-haul miles:*

*Respondent:*

Respondent based its line-haul miles on the average short-line distance between the origin and the Chicago and E. St. Louis gateways, and between the gateways and destination increased by 13 percent to allow for circuitry.

*Protestant:*

Protestant computed costs for so-called shortest practicable routes and longest practicable routes.

*Cost Finding Section's comments:*

If these proceedings did not involve Fourth Section considerations, costs computed for respondent's mileages

would suffice. Because Fourth Section considerations are involved, the costs based on routes longer than the average are important to measure the compensativeness of the proposed rates over the more circuitous routes. Therefore, the Cost Finding Section has used both respondent's average mileages and protestant's longest mileages in its restatement of the costs.

*Conclusion:*

Based on the relationship of present sea-land rates to the sea-land costs as restated for the commodities concerned herein, the present sea-land rates equal or exceed the restated out-of-pocket cost for all movements and exceed the fully distributed expense except for eight movements.

The proposed TOFC rates equal or exceed the restated out-of-pocket TOFC costs computed for hauls with average circuitry for all movements by TTX car and for all but six movements by railroad-owned cars. The proposed rates equal or exceed the fully distributed costs for 14 movements by railroad-owned cars and for 43 movements by TTX cars, out of the 66 rail movements. The restated sea-land costs, both out-of-pocket and fully distributed, is below the restated TOFC cost for all movements of comparable weight.

For hauls with the greatest amount of circuitry the proposed TOFC rates equal or exceed the out-of-pocket costs for 33 of the movements on railroad-owned cars and for 62 of the movements on TTX cars. Based on information in the working papers for these proceedings it appears that a greater number of trailers is carried on TTX cars than on railroad-owned cars.

# APPENDIX C

## RATES, COSTS, AND COST RATIOS

(Rates and costs in cents per 100 pounds; Ratios in percents; minimum weights in 1,000 pounds; SL is Sea-Land; OP is out-of-pocket; FD is fully-distributed; PA is Pan-Atlantic; MC is motor carrier; AR is all-rail.)

		SL		OP Costs			FD Costs			Ratio SL Rates to Costs		AR Rate and Costs		OP		FD		Ratios SL to AR Costs	
		Min.	Rate	PA	MC	Sum	PA	MC	Sum	OP	FD	Min.	Rate	OP	FD	OP	FD	OP	FD
Sewer Pipe	Sherman, Tex., to Clearwater, Fla.	52#	124	59	53	112	68	69	137	111	91	36	133.5	88	114	127	120		
Bottle Caps	New York, N. Y., to Jacksonville	30	125	67	52	119	77	72	149	105	84								
Paper fabric bags	New Orleans, La., to Orlando, Fla.	22	130	58	23	81	68	34	102	160	127								
Rosin	Cross City, Fla., to New York, N. Y.	36	105	63	23	86	72	37	109	122	96								
Canned Goods	Fort Pierce, Fla., to Brewster, N. Y.	40	104	44	42	86	51	66	117	121	89								
Petroleum	Baton Rouge, La., to Miami, Fla.	26	117	40	62	102	46	88	134	115	87								
Paper boxes	Miami, Fla., to Philadelphia, Pa.	36	108	51	25	76	59	37	96	142	113								
Ammunition	Bridgeport, Conn., to Alexandria, La.	30	289	68	60	128	79	84	163	226	177								
Canned Goods	Ft. Pierce, Fla., to New York, N. Y.	40	94	57	22	79	65	36	101	119	93								

# 26,000 pounds are used as load per trailer when two trailers used for 52,000 pounds.

NOTE: Rail costs are shown for those movements where protestants introduced rail costs. Rail costs are adjusted to reflect loss and damage claim payments, shown in Bureau of Accounts, Cost Finding and Valuation Statement No. 2-58, applicable to the commodities in question.

# APPENDIX D

**Order**

At a Session of the INTERSTATE COMMERCE COMMISSION,  
held at its office in Washington, D. C., on the  
19th day of December, A. D. 1960.

INVESTIGATION AND SUSPENSION DOCKET NO. M-10415  
COMMODITIES—PAN-ATLANTIC STEAMSHIP CORPORATION

INVESTIGATION AND SUSPENSION DOCKET NO. M-10430  
ADIPIC ACID—BOUTTE & LULING, LA., TO EAST

INVESTIGATION AND SUSPENSION DOCKET NO. M-10431  
COMMODITIES—SEA-LAND—LOUISIANA TO EAST—  
P. A. S. S. Co.

INVESTIGATION AND SUSPENSION DOCKET NO. M-10434  
VARIOUS COMMODITIES—N. J., N. Y. & PA. TO FLA. & TEXAS

INVESTIGATION AND SUSPENSION DOCKET NO. M-10437  
PULPBOARD-FIBERBOARD—EVADALE, TEX., TO NEW YORK, N. Y.

INVESTIGATION AND SUSPENSION DOCKET NO. M-10469  
ALUMINUM ARTICLES—MASSENA, N. Y., TO TEXAS

INVESTIGATION AND SUSPENSION DOCKET NO. M-10582  
VARIOUS COMMODITIES, SEA-LAND, EAST TO FLA., LA., TEX.

INVESTIGATION AND SUSPENSION DOCKET NO. M-10599  
PAPER—SOUTH TO N. Y. AND N. J.

INVESTIGATION AND SUSPENSION DOCKET NO. M-10602  
COMMODITIES—EAST TO ALA., FLA., AND TEXAS

INVESTIGATION AND SUSPENSION DOCKET NO. M-10624  
FOODSTUFFS—LA. AND MISS. TO CONN., MD., MASS., N. Y.  
PA., AND R. I.

INVESTIGATION AND SUSPENSION DOCKET NO. M-10679  
FEED—FLORIDA TO NEW ENGLAND AND TRUNK LINE TERR.



INVESTIGATION AND SUSPENSION DOCKET No. M-10698  
SEA-LAND—PAN-ATLANTIC S. S. CORP.—PLASTICS &  
WIRE CLOTH

INVESTIGATION AND SUSPENSION DOCKET No. M-10716  
BRUSHES—CONN., MASS., AND N. Y. TO TEXAS

INVESTIGATION AND SUSPENSION DOCKET No. M-10721  
VARIOUS COMMODITIES—PAN-ATLANTIC STEAMSHIP  
CORPORATION

INVESTIGATION AND SUSPENSION DOCKET No. M-10722  
SEA-LAND—VARIOUS COMMODITIES—P. A. S. S. Co.

INVESTIGATION AND SUSPENSION DOCKET No. M-10825  
COMMODITIES—PAN-ATLANTIC SEA-LAND SERVICE

INVESTIGATION AND SUSPENSION DOCKET No. M-10945  
COMMODITIES—PAN-ATLANTIC STEAMSHIP CORP.

INVESTIGATION AND SUSPENSION DOCKET No. M-10946  
COMMODITIES—EAST, SOUTH & SOUTHWEST

INVESTIGATION AND SUSPENSION DOCKET No. M-10963  
VARIOUS COMMODITIES—PAN-ATLANTIC SEA-LAND SERVICE

INVESTIGATION AND SUSPENSION DOCKET No. 6847  
FRESH OR FROZEN FOODS—SEA-LAND—PAN-ATLANTIC  
S. S. CORP.

INVESTIGATION AND SUSPENSION DOCKET No. 6848  
PAPER—ALA. TO FLA. AND FLA. TO TEXAS

INVESTIGATION AND SUSPENSION DOCKET No. 6870  
ALUMINUM & PETROLEUM—TEXAS & LA. TO FLORIDA

INVESTIGATION AND SUSPENSION DOCKET No. 6894  
COMMODITIES—PAN-ATLANTIC, FLA., LA. & TEXAS

INVESTIGATION AND SUSPENSION DOCKET No. 6985  
FROZEN CITRUS PRODUCTS—FLORIDA TO OFFICIAL &  
NEW ENGLAND POINTS

INVESTIGATION AND SUSPENSION DOCKET No. 6834

PIGGY-BACK RATES—BETWEEN EAST AND TEXAS

No. 32313

COMMODITIES—PAN-ATLANTIC—BETWEEN EAST AND TEXAS

FOURTH-SECTION APPLICATION No. 34227

TRAILER-ON-FLAT-CAR SERVICE BETWEEN OFFICIAL

TERRITORY AND DALLAS-FORT WORTH, TEX.

INVESTIGATION AND SUSPENSION DOCKET No. 6906

COMMODITIES VIA PAN-ATLANTIC BETWEEN TEXAS.

LOUISIANA AND FLORIDA

INVESTIGATION AND SUSPENSION DOCKET No. 6918

BAGS AND BOXES—NEW ORLEANS, LA., TO FLA.

INVESTIGATION AND SUSPENSION DOCKET No. M-11051

CLAY AND ROSIN—SOUTH TO EAST

INVESTIGATION AND SUSPENSION DOCKET No. M-11034

CANNED GOODS—FORT PIERCE, FLA., TO BREWSTER, N. Y.

INVESTIGATION AND SUSPENSION DOCKET No. 6932

PETROLEUM PRODUCTS—BATON ROUGE TO MIAMI

INVESTIGATION AND SUSPENSION DOCKET No. M-11264

VARIOUS COMMODITIES—PAN-ATLANTIC STEAMSHIP CORP.

INVESTIGATION AND SUSPENSION DOCKET No. M-11259

PAN-ATLANTIC STEAMSHIP—BETWEEN EAST, SOUTH, AND  
SOUTHWEST

INVESTIGATION AND SUSPENSION DOCKET No. M-11077

COMMODITIES VIA PAN-ATLANTIC—EAST TO FLA., LA.,  
AND TEXAS

INVESTIGATION AND SUSPENSION DOCKET No. M-11361  
CANNED GOODS—FORT PIERCE, FLA., TO NEW YORK, N. Y.

INVESTIGATION AND SUSPENSION DOCKET No. M-11375  
TIRES, CHEMICALS, AND PAINT VIA PAN-ATLANTIC

INVESTIGATION AND SUSPENSION DOCKET No. M-11387  
COMMODITIES IN MOTOR-WATER-MOTOR SERVICE—N. J. & PA.  
TO FLA. AND TEX.

INVESTIGATION AND SUSPENSION DOCKET No. M-11465  
VARIOUS COMMODITIES—EAST TO SOUTH & SOUTHWEST

INVESTIGATION AND SUSPENSION DOCKET No. 6962  
ROOFING—NEW ORLEANS TO TAMPA

INVESTIGATION AND SUSPENSION DOCKET No. M-11421  
IRON OR STEEL CASTINGS OR FORGINGS, HOUSTON, TEX. TO  
BUFFALO, N. Y.

INVESTIGATION AND SUSPENSION DOCKET No. M-11486  
MACHINERY—NEW BRITAIN, CONN., TO LUBBOCK, TEX.

INVESTIGATION AND SUSPENSION DOCKET No. M-11369  
ALUMINUM AND JUNK, MISS. & ALA. TO EAST

*It appearing*, That in I. & S. No. M-10415 and embraced proceedings, on February 10, 1960, the Commission, Division 3, made and filed a report in this proceeding, <sup>2</sup>309 I. C. C. 587, and that upon petition of the railroad protestants, to which the respondents replied, the proceeding was reopened for reconsideration;

*It further appearing*, That in I. & S. No. M-10415 and embraced proceedings, the Commission, on the date hereof, had made and filed a report on reconsideration, which report, and the report of February 10, 1960, are hereby referred to and made a part hereof;

## APPENDIX D

## RATES, COSTS, AND COST RATIOS

(Rates and costs in cents per 100 pounds; ratios in percents; minimum weights in 1,000 pounds; SL is Sea-Land; OP is out-of-pocket; FD is fully-distributed; PA is Pan-Atlantic; MC is motor carrier; AR is all-rail.)

Commodity	From	Sea-Land		OP Costs			FD Costs			Ratio SL Rates to Costs		All-rail Rate and Costs			Ratios SL to AR Costs	
		Min.	Rate	PA	MC	Total	PA	MC	Total	OP	FD	Min.	Rate	OP	OP	FD*
Copper cable	New Haven, Conn.,	30	180	69	28	97	80	40	120	186	150	30	189	101	96	
	to Tampa, Fla.	60#	161	69	28	97	80	40	120	166	134	50	170	67	145	
Floor covering	Kearney, N. J.,	32	166	80	43	123	92	58	150	135	111	30	175	106	116	
	to Monroe, La.															
Roofing or building paper	Long Branch, N. J.,	40	127	56	27	83	65	45	110	153	115	40	166	102	81	
	to Galveston, Tex.															
Roofing or roofing material	New Orleans, La.,	80**	41	41		41	47		47	100	87	80	43	25	164	
	to Tampa, Fla.															
Aluminum extrusions	Gulfport, Miss.,	30	178	68	38	106	79	59	138	168	129	30	181	97	109	
	to Trenton, N. J.															
Iron or steel castings and forgings	Houston, Tex.,	40	152	62	70	132	71	96	167	115	91	60	160	71	186	
	to Buffalo, N. Y.	80**	146	62	70	132	71	96	167	111	87	60	160	71	186	
Power trans- mission machinery	New Britain, Conn.,	20	318	110	143	253	127	179	306	126	104	24xx	335	162	156	
	to Lubbock, Tex.															

\*—Rail fully-distributed costs not shown.

\*\*—40,000 pounds used as load per trailer when two trailers used for 80,000 pounds.

#—30,000 pounds used as load per trailer when two trailers used for 60,000 pounds.

xx—24,000 pounds subject to rule 34 of the classification.

*It further appearing,* That by orders in the other above-entitled proceedings, except I. & S. No. 6834, and No. 32313, the Commission entered upon investigations concerning the lawfulness of the rates, charges, regulations, and practices stated in certain schedules described in said orders, and suspended the operation of the schedules for a period of seven months, said schedules now being in effect;

*It further appearing,* That in I. & S. No. 6834, by order dated November 8, 1957, the Commission entered upon an investigation concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules described in said order, and suspended the operation of the schedules to and including June 13, 1958, and that the respondents voluntarily postponed their effective date;

*It further appearing,* That in No. 32313, by orders dated November 8, 1957, and December 18, 1957, the Commission, on its own motion, entered upon an investigation concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules described in said orders, said schedules being in effect and under investigation only:

*And it further appearing,* That a full investigation of the matters and things involved has been made, and that said division, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereto, which report is hereby referred to and made a part hereof;

*It is ordered,* That Fourth Section Application No. 34227 be, and it is hereby, denied.

*It is further ordered,* That the respective respondents herein be, and they are hereby, notified and required to cancel the said schedules, to the extent found not shown to be lawful in the said report made a part hereof, on or

before February 6, 1961, upon not less than one day's notice to this Commission and to the general public by filing and posting in the manner prescribed by the Commission under the Interstate Commerce Act, and that these proceedings be, and they are hereby, discontinued.

By the Commission.

(SEAL)

HAROLD D. McCoy,  
*Secretary.*

[309 I. C. C. 587]

## INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET NO. M-10415<sup>1</sup>

COMMODITIES—PAN-ATLANTIC STEAMSHIP CORPORATION

*Decided February 10, 1960.*

Sea-land local and joint single-factor through rates on numerous commodities, in trailerload, multiple trailerload, and volume quantities, over single-line routes of

1. This report embraces also 23 other proceedings. Twenty-two of these were orally heard, namely, I. & S. No. M-10430, Adipic Acid from Boutte & Luling, La., to East; I. & S. No. M-10431, Commodities, Sea-Land—Louisiana to East, Pan-Atlantic Steamship Corporation; I. & S. No. M-10434, Various Commodities from New Jersey, New York, and Pennsylvania to Florida and Texas; I. & S. No. M-10437, Pulpboard and Fiberboard from Evadale, Tex., to New York, N. Y.; I. & S. No. M-10469, Aluminum Articles from Massena, N. Y., to Texas; I. & S. No. M-10582, Various Commodities, Sea-Land, East to Florida, Louisiana, and Texas; I. & S. No. M-10599, Paper from the South to New York and New Jersey; I. & S. No. M-10602, Commodities from the East to Alabama, Florida, and Texas; I. & S. No. M-10624, Foodstuffs from Louisiana and Mississippi to Connecticut, Maryland, Massachusetts, New York, Pennsylvania, and Rhode Island; I. & S. No. M-10679, Feed from Florida to New England and Trunk Line Territory; I. & S. No. 6847, Fresh or Frozen Foods—Sea-Land-Pan-Atlantic Steamship Corporation; I. & S. No. 6848, Paper from Alabama to Florida and Florida to Texas; I. & S. No. M-10698, Sea-Land-Pan-Atlantic Steamship Corporation, Plastics and Wire Cloth; I. & S. No. M-10716, Brushes from Connecticut, Massachusetts, and New York to Texas; I. & S. No. M-10721, Various Commodities—Pan-Atlantic Steamship Corporation; I. & S. No. M-10722, Sea-Land—Various Commodities, Pan-Atlantic Steamship Corporation; I. & S. No. M-10825, Commodities, Pan-Atlantic Sea-Land Service; I. & S. No. M-10945, Commodities, Pan-Atlantic Steamship Corporation; I. & S. No. M-10946, Commodities, East, South and Southwest; I. & S. No. M-10963, Various Commodities, Pan-Atlantic Sea-Land Service; I. & S. No. 6870, Aluminum and Petroleum, Texas and Louisiana to Florida; and I. & S. No. 6894, Commodities—Pan-Atlantic, Florida, Louisiana, and Texas. The last 10 listed proceedings originally were part of a separate record entitled I. & S. No. M-10698 et al., but later by agreement these proceedings were merged for handling in the same report with those entitled I. & S. No. M-10415 et al. The twenty-fourth proceeding herein is I. & S. No. 6985, Frozen Citrus Products from Florida to Official & New England Points, which has not been heard. By order dated February 17, 1959, Division 2, acting as an appellate division, ordered that this proceeding be consolidated for disposition in a report with I. & S. No. 6847.



Pan-Atlantic Steamship Corporation and over joint-line routes of motor common carriers and Pan-Atlantic, from, to, and between numerous points in the East, on the one hand, and, on the other, points in the South and Southwest; also from and to points in the South, and between such points, on the one hand, and, on the other, points in the Southwest, found lawful, except as indicated in the report. The excepted rates ordered canceled, and proceedings discontinued.

*William H. Ambrecht, Jr., L. A. Parish, and Warren Price, Jr.,* for respondents and motor-carrier participants in the carrier's tariffs.

*Charles W. Bucy and Leonard M. Shinn* for the Secretary of Agriculture of the United States, intervenor in support of the carrier.

[309 I. C. C. 588]

*Edwin J. Miller and J. J. A. Winzenried* for other interveners in support of the carrier.

*Joseph Hodgson, Jr., and S. S. Eisch* for an intervenor as its interests may appear.

*Edwin N. Bell, James A. Bistline, J. P. Cunniff, Arthur J. Dixon, Earl E. Eisenhart, Jr., Robert Falet, Russel L. Frink, R. C. Gill, Ernest D. Grinnell, Jr., Carl Helmetag, Jr., Bernard Hulkower, Eugene E. Hunt, William Q. Keenan, Howard D. Koontz, V. H. Livingston, Donald McDevitt, J. Edgar McDonald, Prime F. Osborn, Leo H. Pou, Clarence Raymond, B. V. Reynolds, Charles P. Reynolds, Albert B. Russ, Jr., Walter G. Trevelyan, Donald L. Turkal, R. S. Trigg, and Harold B. Wahl* for protestant railroads.

*Guy H. Postell, Reuben G. Crimm, James E. Haydon, and J. G. Quisenberry* for protestant motor carriers.

## Report of the Commission

DIVISION 3, COMMISSIONERS FREAS, WALRATH, AND  
McPHERSON

### BY DIVISION 3:

These proceedings are related and will be disposed of in one report. Exceptions to the report proposed by the examiner, and replies thereto, were filed by certain of the protestants and the respondent, Pan-Atlantic Steamship Corporation, hereinafter called Pan-Atlantic (appearing also for connecting motor common carriers). Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

By schedules filed to become effective on October 29, 1957, in I. & S. No. M-10415, and later in the other proceedings, Pan-Atlantic and the motor common-carrier participants in its tariffs proposed to establish approximately 469 reduced commodity rates<sup>2</sup> for the transportation in "sea-land" service of numerous commodities,<sup>3</sup> in trailer-load, multiple trailer- [309 I. C. C. 589] load, and volume quantities, from, to, and between numerous points in the East, South and Southwest. Upon protests of rail carriers in these areas, The Eastern Central Motor Carriers Asso-

2. Rates and costs are stated per 100 pounds.

3. Including brass, bronze, or copper rods, candy and confectionery, silica gel, radio and television sets, lead, adipic acid, alcoholic liquors, synthetic plastics, rubber, building and paving materials, ammoniacal liquors, sodium acetate, ammonium chloride, potassium caustic, lard, mud-treating compounds, petroleum, plastic materials, springs, clay tile, welding compound, pulpboard, fiberboard, aluminum articles, bags or bagging, calcium chloride, shortening acids, soda, sodium nitrate, paper and paper articles, electrical appliances, air-conditioners, glass bottles, paint, printing paper, wall paper, lube oil, canned or preserved foodstuffs, animal or poultry feed (citrus pomace), frozen foods, frozen fruit products (concentrates), fresh citrus fruit, frozen vegetables, frozen seafoods, paper bags, wrapping paper, paper boxes, aluminum wire cloth, bronze wire cloth, brushes, brush factory products, coal tar dyes, chemicals, Christmas tree holders, cement paste, machinery, spices, spring assemblies, tile, iron or steel wire cloth, woodpulp, aluminum oxide catalyst, transformers, frit, pumps, paint pigments, wallboard, metallic sodium, coffee, iron and steel articles, braided paper, soap, shipping carriers, molasses, chocolate syrup, phosphorus pentasulfide, flour-bleaching compound, graphite, softener, ammunition, building metal work, chewing gum, copperas, cordage, toilet preparations and drugs, floor covering, lamps, automobile tires, aluminum billets, and window glass.

ciation, Inc., and the Southern Motor Carriers Rate Conference, Inc., the operation of the schedules was suspended to and including May 28, 1958 in I. & S. Docket No. M-10415, and later in the other proceedings, after which the schedules became effective.<sup>4</sup> For convenience, the rates under investigation will sometimes be referred to herein as proposed rates.

The Secretary of Agriculture of the United States, Keystone Macaroni Manufacturing Company, Inc., and Devoe & Reynolds Company, Inc., appeared in support of Pan-Atlantic. Seatrain Lines, Inc., hereinafter called Seatrain, also appeared in support of its interests. Seatrain at present operates in a rail-water coastwise service by the use of freight cars as containers.

As a common carrier of general commodities and passengers, Pan-Atlantic is authorized to operate generally between the ports of Boston, Mass., New York, N. Y., Philadelphia, Pa., Baltimore, Md., Georgetown and Charleston, S. C., Jacksonville, Miami, Tampa, Port St. Joe, Panama City, and Pensacola, Fla., Mobile, Ala., New Orleans, La., and Galveston and Houston, Tex. The operating rights of Pan-Atlantic include the transportation of property loaded in motor-vehicle trucks or trailers on trailerships. *Pan-Atlantic S. S. Corp. Operating Rights*, 297 I. C. C. 773.

*The sea-land service.*—Sea-land service is also called trailer-ship (trailer-on-ship) or fishyback service. In this service the lading is transported over both highway and water in the same containers. These are 35-foot trailer bodies, of special design, which are detachable from the trailer chassis. The trailerships are so constructed that each trailer body fits into a slot to prevent shifting at sea. From the standpoint of the shipper, sea-land service is essentially a motor-carrier operation, the principal difference

4. In I. & S. Docket No. 6985, by order of August 5, 1958, the schedules were suspended to and including March 8, 1959. On August 7, 1958, this proceeding was discontinued, but on November 11, 1958, it was reopened. On February 17, 1959, the order of August 5, 1958, was vacated insofar as it suspended the operation of the schedules, but the investigation thereof was continued.

being that the container is moved a considerable distance on an ocean-going ship.

In sea-land service, the consignor may have the container sealed. Generally, this assures that the lading will not again be handled until it arrives at the consignee's place of business and is unloaded under his supervision. Trailer bodies are not sealed when they are to receive additional lading at some other point. Less-than-truckload freight ordinarily would not be sealed [309 I. C. C. 590]. In sea-land service the trailer bodies are lifted on and off the ships by the use of two gantry-type cranes on the vessels. Each crane is capable of unloading one trailer body and placing another on board ship in about 5 minutes. Basic loading procedures call for the placing of an outbound container on the ship, and replacing an inbound container on the same trailer chassis which was used to bring the outbound container to the pier. The patented cranes are parts of the ship, and eliminate the need for costly shore installations. The cranes make it possible to serve any port having adequate water and dockside aprons large enough to permit bringing a truck chassis alongside the vessel.

The stevedoring expense of the old break-bulk service of Pan-Atlantic was about three to four times greater than the vessel-operating costs, whereas in sea-land service the stevedoring expense is small compared with the vessel cost. Compared with the break-bulk service, sea-land has reduced considerably Pan-Atlantic's cargo handling time, its in-port vessel time, and its loss, damage, and pilferage expenses.

The trailer bodies used by Pan-Atlantic in sea-land service have a capacity of about 2,088 cubic feet for dry-cargo and open-top equipment, and of about 1,520 cubic feet for refrigerated equipment. Whether the containers are loaded or empty, a full complement of 226 containers is carried on each voyage. It is necessary to keep a balance of containers at the several ports, and the stability of the trailerships must be maintained.

To achieve the proper balance of the cargo, fore and aft, port and starboard, and top and bottom, it is necessary that there be a systematized sequence of loading the trailer bodies. For this purpose, many of the outbound containers are assembled at a parking lot near the port at least 60 hours in advance of arrival of the ship, and the bulk of the cargo must be delivered to shipside parking lots at least 12 hours before the arrival of the ship. The proper sequence of loading affects the trim of the vessel, the list of the vessel during and upon completion of loading, and the degree of roll and stability. In addition, certain types of containers must be stowed in a limited number of positions only, depending upon the weight, the container construction, the cargo carried, and the destination. One truck breakdown enroute to the parking lot from a pickup point could destroy the entire planned loading sequence for any one hatch. Generally, Pan-Atlantic cannot accept sea-land freight and load it on a ship the same day.

Both single-line and joint-line sea-land services are provided by Pan-Atlantic. It operates single-line between ports and port terminal areas which it is authorized to serve, by use of its trailerships [309 I. C. C. 591] on the water and leased tractors and trailers on the land. The motor equipment is leased from an affiliated corporation, and is operated under the Pan-Atlantic name and operating rights. In some instances Pan-Atlantic has operated single-line 60 miles beyond a port. The extent of its single-line operations are the subject of complaints in dockets Nos. MC-C-2163 and 2167.

The joint-line sea-land service of Pan-Atlantic extends well beyond the ports and port terminal areas. For example, electrical appliances may move joint-line, motor-water-motor, from Somersworth, N. H., via the ports of New York, (Port Newark, N. J.) and Houston to Dallas, Tex. Where the route is listed in part as "motor", it means line-haul service under the operating rights of motor common

carriers, and not single line-haul service under the operating rights of Pan-Atlantic.

Presently, Pan-Atlantic is a wholly-owned subsidiary of McLean Industries, Inc., hereinafter called McLean. The total investment in the new type sea-land operations made by McLean or its subsidiaries or affiliates has been between \$40 and \$45 million, including about 50 percent for conversion of break-bulk type vessels to sea-land vessels, over \$20 million for automotive equipment, and about \$500,000 for procurement of terminal facilities, including docks, piers, staging areas, and warehouses.

The pool of highway equipment which is or will be available to Pan-Atlantic consists of about 3,000 dry-cargo (closed-van) trailer bodies, 500 mechanically-refrigerated containers, 300 open-top containers, 1,700 trailer chassis, 300 tractors, and miscellaneous vehicles. While there will be a total of 3,000 dry-cargo containers, about one-third of these will be used in a trailer-on-ship service to Puerto Rico. The dry-cargo container, used by Pan-Atlantic in sea-land service, plus a trailer chassis, weighs about 10,000 pounds, and has a payload capacity of about 40,000 pounds.

The sea-land tariffs do not provide extra charges for the use of refrigerated equipment, and the rates on commodities requiring such equipment are adjusted to provide for this expense. The mechanically-refrigerated containers have dual-type motors. An electrical motor is used for the refrigerating machinery while a container is aboard ship, and a motor using butane or other fuel when it is on land. A refrigerated container plus a trailer chassis weighs a total of about 13,000 to 14,000 pounds, and has 6 inches of insulation. The greater weight of the refrigerated equipment, together with State maximum weight laws, results in smaller maximum permissible loads of payload freight in the refrigerated equipment than in dry-cargo containers. For this reason, in computing adjusted costs, 35,000 pounds is used herein on frozen and fresh commodities mov- [309 I. C. C. 592] ing in refrigerated equipment in sea-land serv-

ice via Port Newark over New Jersey highways as the maximum load per trailer, in lieu of the tariff minima of 36,000, 40,000, and 80,000 pounds.

The New Jersey highway weight limitation is 60,000 pounds, and the maximum weight of payload freight depends upon the equipment utilized. In Investigation and Suspension Docket No. 6985, Pan-Atlantic published rates with minima of 35,000 and 70,000 pounds on frozen or chilled fruit products from Florida origins moving via Port Newark over New Jersey highways to eastern destinations. The minimum weights in I. & S. Docket No. 6985 were coupled with the same rates as were then under investigation in Investigation and Suspension Docket No. 6847, wherein the former minima were 36,000 and 80,000 pounds. The suspension of the rates in I. & S. Docket No. 6985 was vacated partly in consideration of the agreement of Pan-Atlantic to abide by the order resulting from the investigation in I. & S. Docket No. 6847. Any further discussion or findings herein which relate to the same rates in both I. & S. Dockets Nos. 6847 and 6985, but which relate to the different minima in those dockets, will be considered as relating to the lower minima of 35,000 and 70,000 pounds (2 trailers). These lower minima by reason of the State weight laws will result in more economic operations by Pan-Atlantic in the utilization of refrigerated trailers.

*History of Pan-Atlantic operations.*—Beginning in 1933, Pan-Atlantic operated as a conventional break-bulk carrier, except during the World War II years. In April 1956, it started using two tanker-trailerships, converted from T-2 tankers, in its Atlantic-Gulf coastwise service. Four tanker-trailerships ultimately were placed in this service, but have been removed. Those ships transported 60 containers on deck in addition to bulk oil in the tanks.

In May 1957, Pan-Atlantic suspended its Atlantic-Gulf coastwise break-bulk service to provide vessels for conversion into trailerships. For its land service in the Atlantic-Gulf coastwise trade, it converted four ships into



trailerships, each with a capacity of 4,000 tons of payload freight, and each holding 226 containers, of which 166 are stowed below deck and 60 on deck. The ships are 468 feet long and capable of a speed of about 15.5 knots, substantially the same as when the ships were used in the break-bulk service.

In October 1957, Pan-Atlantic began trailership service to and from the ports of New York, Miami, Houston, and Tampa. Later, the port of New Orleans was added, and for a time the port of Philadelphia (Wilmington, Del.) was served. In April and May 1958, the Pan-Atlantic trailership scheduled service included a round trip between the ports of New York and Houston direct, and a round trip between the ports of New York and New Orleans, serving [309 I. C. C. 593] the port of Miami on the southbound journey, and the port of Tampa on the northbound journey.

In addition to its sea-land service as described above, Pan-Atlantic provides a break-bulk service in the inter-coastal trade between Pacific and Atlantic ports. Pan-Atlantic or an affiliate has provided, or will provide, another trailership service between north Atlantic ports and Puerto Rico.

*Water carriers and the national defense.*—Prior to World War II there were about 19 deep-water common carriers operating in the Atlantic-Gulf coastwise trades, employing about 139 vessels. In 1940, these water carriers transported over 8,500,000 tons of cargo. Today, only two carriers operate in this trade, namely, Seatrain and Pan-Atlantic, operating, respectively, six and four vessels. A comparison introduced by Pan-Atlantic shows that between 1939 and 1956, the tonnage handled by class I railroads in the United States increased 160.5 percent, and the tonnage handled by class I motor carriers increased 545.6 percent. Excluding bulk oil carried by Seatrain and Pan-Atlantic, the tonnage handled by water carriers in the Atlantic-Gulf coastwise trade suffered a decrease of 79 percent.

Since World War II there has been a substantial expansion of commerce in the United States, particularly in the South and Southwest, but an exception to the general growth of transportation has been the Atlantic-Gulf coastwise dry-cargo tonnage of the water service. Pan-Atlantic estimates that Seatrain operating at full capacity could transport about 1,000,000 net tons annually, and that Pan-Atlantic could transport about 800,000 net tons per year (100 round-trip voyages with full loads of 4,000 tons in each direction). The total for the two water carriers would be 1,800,000 net tons, compared with over 8,500,000 net tons transported prewar by the water carriers in the same trade. Excluding bulk petroleum carried in tankers, Pan-Atlantic carried in excess of 1,000,000 tons in its coastwise break-bulk service in 1950. In 1956 and 1957, it carried in coastwise service only 433,915 and 332,057 tons, respectively.

Upon resumption of break-bulk service following World War II, Pan-Atlantic and other domestic coastwise water carriers were handicapped seriously by substantial increases in operating costs, particularly costs in loading and unloading cargo from the ships. The United States Maritime Administration stated in a 1955 review, in part:

Traffic figures indicate that the decline in dry-cargo tonnage has occurred primarily, if not wholly, in the break-bulk dry-cargo trades where rising costs, particularly in loading and discharging the ship, have largely eliminated the so-called inherent economic advantages of ocean transport.

The basic, long-range solution of the break-bulk dry-cargo problem appears to lie in the adoption of technological improvements which will reduce cargo handling [309 I. C. C. 594] and other related costs and result in less in-port time and better vessel utilization.

In Pan-Atlantic's opinion, these proceedings involve the survival of an important segment of our domestic merchant marine. The expenses in the present sea-land trailer-

ship operation are from \$10 to \$12 per cargo ton less than those incurred in the previous break-bulk type operation. This reduction in expense is mainly a result of the reduction in cargo-handling time and in-port vessel time.

*The sea-land rates.*—The sea-land rates under investigation herein are from, to, or between points in 15 States, namely, Massachusetts, New Hampshire, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, and Maryland in the East; Florida, Alabama, Mississippi, and Louisiana (in part) in the South; and Louisiana (in part), Texas, and Oklahoma in the Southwest. Among the 469 rates listed as here under investigation, some are representative of other rates where those shown are believed by Pan-Atlantic to be sufficient to show the principle of rate-making employed by that carrier.

In addition to the rates under investigation, sea-land rates also are published from, to, or between points in the States of Maine, Vermont, Virginia, West Virginia, Ohio, Tennessee, South Carolina, and Arkansas, points in Canada, and in the District of Columbia. About 250 motor carriers participate in Pan-Atlantic's tariffs. Since Pan-Atlantic has recourse to numerous connecting motor carriers whose operations reach throughout the United States, the rail protestants consider Pan-Atlantic's sea-land service to be an actual and potential threat to much of their long-haul, heavy-loading, and high-rated tonnage. There are other pending proceedings in which Pan-Atlantic rates are under investigation, and the parties therein have stipulated that the instant records may be considered in those proceedings.

Pan-Atlantic published these sea-land commodity rates to secure traffic in competition with other carriers (whether rail, motor, or water), and particularly in competition with the overland carriers. Since the record does not show specifically that any traffic has moved via Pan-Atlantic at rates as high as the competing rail rates, Pan-Atlantic insists that its rates must be differentially lower than the rail rates. It also seeks differentials under the motor-carrier rates. The motor-carrier competition faced by Pan-

Atlantic is from common and private carriers, and from motor carriers hauling so-called exempt commodities. Where the competition is primarily with Seatrain, Pan-Atlantic proposes rate equalization with Seatrain. Some of the proposed sea-land rates, including those on toilet preparations and drugs in Investigation and Suspension Docket No. M- [309 I. C. C. 595] 10963, were published to equalize them with the barge rates published by C. G. Willis, Inc.

Pan-Atlantic sea-land rates include marine insurance of the lading without extra charge. To the extent that Seatrain does not provide such free marine insurance, Pan-Atlantic's charges would be lower than Seatrain's charges at equal rates. When Pan-Atlantic operated its prior break-bulk service, it also provided marine insurance between many points, but generally not between points in the East and the Southwest. In sea-land service when the lading is on the highways, the motor carrier provides insurance.

Traditionally, water rates, including water-rail and water-motor rates, have been maintained at levels differentially lower than the corresponding all-rail rates, principally because of disadvantages in the water services due to perils of the sea, slower transit time, and infrequency of sailings. The last major proceeding in which the rates of the Atlantic-Gulf coastwise water carriers were considered was *Class Rate Investigation, 1939*, 286 I. C. C. 5 (docket No. 28300—1952). Therein, the Commission prescribed reasonable maximum first-class rates on ocean-rail traffic, and also reasonable maximum percentage relations of the lower classes to first class, between north Atlantic ports and interior points in eastern seaboard territory, on the one hand, and, on the other, New Orleans and Baton Rouge, La., Texas Gulf ports, and interior points in the Southwest. Those class rates were designed to preserve the then-existing differentials of the ocean-rail rates under the all-rail rates.

Pan-Atlantic had in effect for a number of years arrangements for through and continuous carriage with the railroads, and joint rates with overland carriers, both rail and motor. Joint water-motor rates were published by Pan-Atlantic as early as 1936. It has also published so-called through nonconcurring rail-water class rates.

The prescribed rates in docket No. 28300 were class rates, whereas in the instant proceedings only commodity rates are in issue. Prior to the inauguration of its sea-land service, Pan-Atlantic maintained between points in eastern and southwestern territories a substantial number of joint truck-water commodity rates generally on the same level as the ocean-rail class rates prescribed in *Class Rate Investigation, supra*, and its class-rate structure between eastern and southwestern territories also was on the same general level as the prescribed ocean-rail class rates. Pan-Atlantic evaluated the rate structures of the existing water and overland carriers and concluded that its sea-land service needed rate differentials under all-rail rates, but that lesser differentials would suffice than those maintained under its previous break-bulk service.

[309 I. C. C. 596] For its trailership service, Pan-Atlantic first put into effect class rates, and later commodity rates. Generally, the class rates were protested, but were not suspended and became effective. Many of the commodity rates were suspended and are under investigation in these and other proceedings. The class-rate structure established by Pan-Atlantic varies depending upon origins and destinations, the direction of the competing rail rate-making routes, the constructive water mileages, and the prescribed maximum ocean-rail rates, among other factors. Generally, its trailership class rates are on the basis of 92.5 percent of the overland-carrier rates on terminal (port) to terminal (port) traffic; and on the basis of 95 percent of the overland rates on traffic moving from, to, or between interior points located beyond the terminals (ports).

The commodity rates for its trailership service in general, were related percentagewise to the all-rail commodity

rates in the same measure as the sea-land class rates are related to the all-rail class rates. As there are exceptions to the 92.5-95 percent formula in the class-rate structure, so also there are numerous exceptions to the formula for commodity rates. Individual adjustments are made in the latter rates because of varying competition with all-rail carriers, all-motor common carriers, Seatrain, a barge line, and exempt motor carriers. Also, there are instances where the sea-land rates were designed to preserve competitive relations between shippers located at different origins. The result is a wide fluctuation in the differentials between the sea-land rates and the all-rail commodity rates.

For example, the sea-land rate on paper boxes from Miami to Houston is 96 cents, minimum 36,000 pounds, compared with the all-rail rate of 143 cents, same minimum. In this instance the competition faced by Pan-Atlantic was the result of a leased-truck arrangement which offered a rate of 101 cents, minimum 32,000 pounds. This respondent urges that since the all-rail rates fail to bear a consistent relation to cost, sea-land differentials under all-rail rates can not and need not follow a consistent pattern on the basis of costs. It contends that the value-of-service consideration is of primary economic importance in the fixing of intercarrier rate differentials.

The protestant rail carriers point out that Pan-Atlantic has not attempted to justify the differential between any sea-land commodity rate and the rate of any other common or contract carrier by relating it to the added costs to the shipper in using the sea-land service, but that it relies on the assumption that a differential is required primarily because a part of the sea-land service is operated by water. For example, the justification, exclusive of Pan-Atlantic cost and other general evidence relating to the sea-land service, of the sea- [309 I. C. C. 597] land rate<sup>5</sup> of 140 cents, minimum 26,000 pounds, on petroleum from Bayway, Elizabeth, and Nutley, N. J., to Goodhope, La., is that "All-rail

5. Where comparisons are made with all-rail rates, the rates include Ex Parte No. 206-A general increases were applicable.



service is the competition in every instance. The rates proposed for sea-land service are, in every case, 7 cents per 100 pounds under the all-rail rates. This figure represents a basis only 5 percent less than the all-rail rates". Nothing is said of the petroleum shippers' advantages or disadvantages, if any, in using the two competitive modes of transportation.

The proposed rates are said by Pan-Atlantic to cover fully-distributed costs in most instances, and in all instances to cover out-of-pocket costs. However, one rate, from New Orleans to Rochester, N. Y., on foodstuffs (canned goods) of 106 cents, minimum 36,000 pounds, admittedly does not cover out-of-pocket cost, and the respondent has indicated its intention to cancel that rate. Generally, the proposed sea-land rates are lower than the all-rail rates. In a few instances, for example, where there are several rates and minima on a commodity, the all-rail rates are lower than the proposed sea-land rates at the higher minima. Certain sea-land rates are listed in appendix A hereto, together with sea-land costs, and corresponding all-rail rates and costs. The sea-land costs are broken down between the Pan-Atlantic portion and the motor-carrier portion. Also shown are the ratios of the sea-land rates to the sea-land costs, and the ratios of sea-land costs to all-rail costs. The costs shown in this appendix are those obtained from a restatement of the sea-land costs developed by our Cost Finding Section.

*Costs.*—Pan Atlantic and the protestant rail carriers submitted extensive cost evidence. Protestant southern motor carriers also submitted cost evidence concerning the transportation of frozen concentrates. These cost studies have been considered by our Cost Finding Section, as requested by the parties, and that section has restated the sea-land costs. The restatement is too voluminous to be reproduced in its entirety, but representative results thereof are reproduced in appendix A, and the detailed rationale of the restatement will be found in appendix B hereto.



Of the 489 rates listed, including 20 rates canceled under special permission, 13 failed to yield out-of-pocket cost, and 145, or about 30 percent, failed to yield fully-distributed cost. In the circumstances here presented, a lawful rate need not necessarily yield fully-distributed cost. Some of the sea-land commodity rates are more than double the out-of-pocket costs and nearly double the fully-distributed costs. Other sea-land rates exceed the costs by narrower [309 I. C. C. 598] margins. The record does not show the volume of traffic which is expected to move or is now moving on any of these rates.

Pan-Atlantic is proposing a rate, for example, on shipping carriers (empty barrels and bottles) from Daytona Beach, Fla., to Philadelphia of 77 cents, minimum 16,000 pounds, for which the out-of-pocket cost as shown in the restatement is 147.8 cents. The out-of-pocket cost as shown by Pan-Atlantic is 72.3 cents. In the restatement, there are 13 listed rates which yield less than the out-of-pocket cost. Two of these were canceled under special permission, namely, the rates on canned goods from Houma, La., to Syracuse, N. Y., and from St. Martinsville, La., to Baltimore. Of the remaining 11 rates, aside from the above-mentioned rate on empty barrels and bottles, four apply on canned goods, four on pulpboard, and two on synthetic plastics. The canned-goods rates are from New Orleans to Baltimore (rate 99 cents, out-of-pocket cost 102.6 cents), from New Orleans to Rochester (rate 106 cents, out-of-pocket cost 115.3 cents), from Gulfport, Miss., to Philadelphia (rate 101 cents, out-of-pocket cost 103.6 cents), and from St. Francisville, La., to Miami (rate 92 cents, out-of-pocket cost 95.2 cents). The four rates on pulpboard are from Bogalusa, La., to New York, and from Kreole, Miss., to New York and to New Brunswick and Wharton, N. J.<sup>6</sup>

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6. The rates listed on pulpboard from Bogalusa and from Kreole to New York apply only to stations in New Jersey taking the New York rates, and a higher listed rate applies to New York from Kreole. The higher listed rate exceeds out-of-pocket cost in the restatement.

These respective pulpboard rates are 92, 88, 90, and 88 cents, and their restated out-of-pocket costs are 95.5, 91, 91, and 91 cents. The two rates on synthetic plastics are from Baton Rouge to Baltimore and to Rome, N. Y. They are 109 and 122 cents, and their restated out-of-pocket costs are 113 and 123.8 cents.

The minimum weights used in computing the restated costs in connection with these 11 rates are the tariff minima. In instances where the tariff minima exceed 40,000 pounds and the shipments would necessitate using two trailers, the minimum weights used are half of the tariff minima. As indicated, the ratios of these 11 sea-land rates to their restated out-of-pocket costs range from 52 to 99 percent. Excluding the rate on empty barrels and bottles, the ratios range from 92 to 99 percent. These 11 rates do not appear to cover out-of-pocket costs, and thus are not compensatory.

One of the principal matters in dispute between the parties concerning the development of sea-land costs is the use by Pan-Atlantic of a load factor of 75 percent in computing its vessel and port out-of-pocket expenses. Pan-Atlantic's computations of its costs are based on its experience on five voyages. It states that the average load experienced was 75 percent of the maximum practical vessel [309 I. C. C. 599] utilization, and that in time its voyages will enjoy 100 percent practical utilization. Thus, it urges that only 75 percent of the vessel costs were out-of-pocket expenses. The Cost Finding Section used 100 percent of direct expenses before the addition of overhead to determine the out-of-pocket water costs of Pan-Atlantic. This treatment of out-of-pocket costs appears justified by the facts of record and by the usual costing methods.

*The comparative value of the sea-land service.*—Pan-Atlantic contends that the primary accomplishment of its sea-land trailer-ship service lies in the reduction of its internal operating expenses, rather than in any substantial improvement in the value of its service to the public. On

the other hand, the opposing carriers generally contend that there has been a substantial change in the character of Pan-Atlantic's service from the old break-bulk service to the new trailership service, and particularly in its value to the shipping public. Pan-Atlantic's own literature and public advertisements promise that its trailership service will save transportation costs, avoid delays, prevent damage, and accomplish a reduction in loss, damage, and pilferage. To substantiate their contentions, Pan-Atlantic and the opposing carriers offered the testimony of numerous shippers.

The views of the shippers as a whole were many and varied, according to their individual transportation problems. The most important factor to the shippers as a whole is the measure of the rates. The shippers want reasonably low rates, available over as many competing modes of transportation as possible. Many shippers would not use sea-land service at rates equal to or higher than all-rail or all-motor rates. A number of shippers also would not use sea-land service at rates higher than those of Seatrain. Some shippers, who would not use sea-land service if Pan-Atlantic's rates were equal to the rail rates, also would not offer any of their traffic now moving by sea-land service to the railroads if the rail rates are maintained at the present differentials over sea-land rates. Other shippers would not use all-rail service even at differentials under all-motor or sea-land rates. At least one shipper would use sea-land service at rates equal to the rail rates because of the drayage expense when using rail service. Price competition in the sale of some commodities is so keen that the shippers thereof cannot pay a transportation premium for one mode of a service as against another.

*Time in transit.*—Time in transit is a factor considered by many shippers in determining the value of a transportation service, and varies widely from commodity to commodity, and according to origins and destinations. A study by the rail carriers, using a random sampling technique,

showed an average transit time by rail of 10 days from New England to the Southwest, 9 days from New [309 I. C. C. 600] England to the South, 9 days from trunk line territory to the Southwest, and 8 days from trunk line territory to the South. This study indicates that rail service is far from uniform in the time required for what appear to be similar services. Advertised rail schedules were introduced by Pan-Atlantic which show 5 days from New York to Jacksonville, 4 days from Philadelphia to Tampa, 5 to 7 days from Baltimore to Miami, and 4 to 6 days from these origins to Dallas and Fort Worth.

A study made by Pan-Atlantic revealed average transit time by sea-land on four voyages during November and December 1957, of 13.98 days from eastern origins to Dallas and Fort Worth. Rail carriers point out that the latest sea-land schedules indicate that the vessels move between Newark and Houston in 6 days, between Newark and Miami in 3 days, and from Tampa to Newark in 4 days. Allowing 2 days at both origin and destination for the "land" portion of the trip, and adding the "sea" schedule, the rail carriers obtain total transit time somewhat faster than that obtained by Pan-Atlantic in its study. The rail carriers contend that the Pan-Atlantic study covers movements which occurred when the sea-land service was new and subject to operational difficulties which plague every new venture.

The rail carriers state that where there are no holidays or other exceptional circumstances, and where the motor-carrier operations of the sea-land service are conducted with reasonable dispatch, the sea-land transit time is as fast as or faster than all-rail. Generally, Pan-Atlantic has been able to adhere very closely, if not almost exactly, to the "sea" portion of its scheduled sea-land service. However, the perils of the sea do at times disrupt sailing schedules. All carriers are subject to delays in varying degrees as a result of labor disputes and the weather. Sea-land is also subject to the breakdown of vessels, for which substitutions are not readily available.

As to the land portion of Pan-Atlantic's service, several factors could result in delay. Trailers must be placed in proper sequence for loading, motor-carrier or consignee convenience may necessitate delay in delivery, and a particular container may be carried with more stops at intermediate points than others.

It is clear that the time consumed in loading and discharging a trailership in sea-land service is less than that in loading and discharging a break-bulk ship in the prior break-bulk service. Where it took two days for loading in the break-bulk service, it appears that one day would suffice in the sea-land trailership service. Thus, where comparable transit time warranted Pan-Atlantic rates for its break-bulk service under the all-rail rates, there is less justification for such a relationship in connection with the sea-land trailership service.

[309 I. C. C. 601] *Frequency of service.*—Frequency of service or sailings is another factor cited by many shippers. In many instances the railroads and the motor carriers provide daily service, or more frequent service than the once or twice a week service of sea-land. By rail a shipper may ship every day, but using sea-land he may have to bunch his shipments. In some instances, on the other hand, rail switching service is only semi-weekly. Some shippers consider that specific sea-land sailing dates and delivery dates are consistent, and that there are inconsistencies in rail departures and uncertainties in rail arrivals and delivery dates. The importance of frequency of service varies from commodity to commodity, and according to the individual needs of the various shippers.

*Costs of loading or unloading.*—Another factor considered by shippers is the cost of loading or unloading a trailer versus a box car. Pan-Atlantic's tariffs provide that in the

sea-land service, subject to certain restrictions and limitations, the truck driver will load and unload the trailers from and to points near the tailgate. In actual practice the driver is given considerable latitude. Generally, the Pan-Atlantic sea-land driver will provide the same service in loading and unloading as provided by motor common carriers in all-motor service. By contrast, the shippers and consignees generally are required to load and unload rail cars without any assistance from rail employees. One shipper found it necessary to have an additional man, as compared with the man power needed for rail shipments, to load sea-land trailers because its plant was constructed for rail shipments. Many shippers found that additional men or man-hours were required to load rail cars compared with sea-land trailers. Loading and unloading or assistance in these operations by the truck driver are not desired by some shippers and consignees. For example, beer and ale are loaded and unloaded by a shipper and his distributor-consignee with their own labor, whether the shipments move in trailers or in rail cars, but in this instance the Pan-Atlantic tariff requires, by appropriate restrictions, that the loading and unloading be by the shipper because of the weights of the pallets. Lift trucks are used in this operation.

Some shippers feel that the assistance of the truck driver in loading or unloading is offset in the use of rail cars by the provisions of 48 hours' free time for loading or unloading. Generally, in sea-land service, as in all-motor-carrier service, the trailers must be unloaded promptly upon arrival, but there are exceptions to suit the convenience of carriers and shippers. Some shippers are able to order trailer equipment and have it spotted within two hours. In some instances, Pan-Atlantic will place its trailers for loading 2 or [309 I. C. C. 602] 3 days prior to actual sailing dates, thereby enabling a shipper to load equipment at times when the shipper's warehouse labor otherwise would be idle. Many shippers have found no substantial differ-



ences in the cost of loading trailers and rail cars, and this factor to these shippers has not been a determining element in their selection of the mode of transportation.

*Blocking, dunnage, and bracing.*—Another factor considered by some shippers is the cost of blocking, dunnage, and bracing of shipments. Costs for strapping and flooring paper for rail box cars, including labor, were greater for one shipper than its costs for these items when it used sea-land trailers. Some shippers have found it more economical to load a trailer than a rail car because the former needs less dunnage, blocking, and bracing than the latter. Cleaning rail cars has been an added expense for some shippers. Other shippers have experienced no differences in the cost of using trailers or rail cars. Generally, less dunnage or no dunnage is required when damage-free or compartmentalized cars are used. A number of shippers state that dunnage, blocking, and bracing costs are not factors in determining the mode of transportation utilized.

*Door-to-door service.*—Door-to-door service is an important consideration to many shippers. In sea-land service, since the lading often moves in a sealed trailer from the door of the consignor to the door of the consignee without being handled enroute, the result is little or no damage. Where a shipper or consignee does not have a private or assigned rail siding, the sea-land service has a distinct advantage over rail service, the same as all-motor service. Thus, a shipper at its Miami and New Orleans warehouses has no private sidings, and would not use all-rail service even at differentials under all-motor or sea-land rates. Some New York City consignees do not have private or assigned sidings, which makes drayage necessary when using all-rail service. A survey made by Pan-Atlantic showed that out of 2,350 of its potential shippers and consignees, 1,805 or about 77 percent had private rail sidings, while 545 were either not located on rail sidings or were served by team tracks.



*Loss or damage.*—Generally, the experience of shippers using sea-land service has been that it entails either negligible or no loss, pilferage, or breakage, and it is not as subject to weather damage as the old break-bulk service with cargo in open holds. Many shippers have found that rail shipments are damaged frequently, and some suggest that rail boxcar rates should be differentially lower than sea-land rates to offset the expense and inconvenience resulting from loss and damages on rail shipments. Many other shippers do not consider loss and damage as a factor in determining the mode of transportation.

[309 I. C. C. 603] So-called damage-free and compartmentalized cars are available to shippers in railroad service to a limited extent, and when these cars are used damages generally are negligible. Some shippers have found in using such special cars that their expenses of loading are increased. The higher purchase costs of such cars has deterred the railroads from investing their capital on a large scale in this type of equipment.

*Stop-off privileges.*—Some shippers use railroad stop-off privileges frequently. A number of shippers use all-motor or all-rail service because of the availability of stop-off arrangements, such as storage, diversion, and milling in transit. The sea-land service provides stop-off privileges in connection with the land portions of the service. Some shippers consider the sea-land service to be more flexible than all-rail service, in that three sea-land deliveries are permitted in a given city with no penalty other than the stop-off charges. The rail stop-off charges are \$18.09 in official territory, and \$16.20 in the Southwest, compared with a sea-land stop-off charge of \$13.

A traffic study by the rail carriers for the period of December 2 to 6, 1957, inclusive, of shipments from northeastern states to southern and southwestern states shows that out of 1,326 cars, 122 were stopped for partial loading or unloading, and of these only 12 cars, or less than 1 per-

cent, were stopped in intermediate territory beyond the reach of sea-land competition.

*Other value-of-service considerations.*—One of the principal considerations in the shipper's determination of the value of water-carrier service is the uncertainty due to the perils of the sea. Lower minimum weights available in some instances in sea-land service and higher minima in railroad service will at times result in different inventory costs for some shippers. Also, in rail service there are extra charges for protective services against heat and cold, whereas in sea-land service such charges are included in the sea-land rates.

The railroads can handle oversized freight, whereas sea-land trailers are limited to articles about 34 feet long, and there are State highway weight limitations for trailers. So far as appears, little or none of this oversized freight is moving in the areas in which sea-land competes.

#### GENERAL DISCUSSION AND CONCLUSIONS.

Only the sea-land rates of Pan-Atlantic are under investigation herein. That carrier urges that it cannot exist without differential rates; that is, rates lower than all-rail and all-motor rates. The railroads urge that, regardless of whether we approve or disapprove the new sea-land rates, there should be no order which would require a fixed relation between the sea-land and the all-rail rates.

[309 I. C. C. 604] In I. & S. Docket No. 6847, the protestant, Southern Motor Carriers Rate Conference, Inc., requests findings that Pan-Atlantic has failed to establish that the proposed level of sea-land rates on frozen citrus juice concentrates is necessary for Pan-Atlantic fairly to compete with motor common carriers; that the motor common carriers depend for their very existence upon this traffic and will lose substantial tonnage to Pan-Atlantic through these rate reductions; that Pan-Atlantic will create destructive competition, with resulting needless and

wasteful dissipation of common-carrier revenues; and that Pan-Atlantic has failed to establish that the proposed rates are reasonably compensatory. In its exceptions to the proposed report, these requests are reiterated. This protestant, however, presented evidence which deals only with its rates at lower minima than those of the respondent, and the injury claimed is not established on this record.

The protestant rail carriers except to the Cost Finding Section's selection of rail mileages and to the examiner's failure to adopt that section's suggestion as to the respondent's separation of accounts in its annual reports. Neither exception concerns matters of such weight as to affect the decision herein. Pan-Atlantic restates its contention for a differential under the all-rail rates, and excepts to certain factual interpretations by both the hearing examiner and the Cost Finding Section. The instant report clarified these interpretations.

The sea-land rates here in issue, with the exceptions previously noted, appear to be reasonably compensatory. The remaining question is whether they are unlawful because of their effect on competitive rates of other modes of transportation.

Section 307(f) of the act provides that in prescribing just and reasonable rates by water, we shall give due consideration, among other factors, to the effect of the rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient water transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable water carriers, under honest, economical, and efficient management, to provide such service. The wording of this paragraph is substantially similar to that in sections 15a(2) and 216(i) of the act.

Section 15a(3) of the act provides, in part, that the rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation,

giving due consideration to the objectives of the national transportation policy; and section 305(c) provides that differences in the rates of a water carrier with respect to water transportation from those in effect by a rail carrier with respect to rail transportation shall not be deemed to [309 I. C. C. 605] constitute an unfair or destructive competitive practice. Also, the national transportation policy provides, among other things, that the provisions of the Interstate Commerce Act shall be so administered as to recognize and preserve the inherent advantages of each mode of transportation.

The sea-land rates under investigation herein, in general, are lower than the corresponding rail rates by lesser amounts than the rates formerly maintained in connection with Pan-Atlantic's break-bulk service. At the same time, Pan-Atlantic's costs of operation under its sea-land service are from \$10 to \$12 a ton less than the costs under its break-bulk service. Accordingly, Pan-Atlantic urges that protestants which contend that its rates should be higher are in the anomalous position of asking that it be required to charge the shipping public more for a service which is less expensive to perform, thereby discouraging increased transportation efficiency and depriving the shipping public of the advantages of improved transportation methods. It asserts that it should not be required to charge rates higher than its operating costs for the sole purpose of protecting the revenues of competing carriers.

On some traffic, particularly port-to-port traffic and certain other traffic subject to the higher single-trailer minima, Pan-Atlantic is the low-cost agency; on other traffic, the railroads' costs are lower than those of Pan-Atlantic. However, we do not have before us either the rail or sea-land costs as to many of these rates, and there is a complete absence of any all-motor costs. Moreover, as above discussed, other considerations enter into the factor of inherent advantages. For these reasons, we cannot determine on this record where the inherent advantages may lie as to each commodity, and still less as to each particular rate. Also,

it is well established that cost is only one of the elements which must be considered in passing upon the lawfulness of rates. In these circumstances, our determination here should not rest solely upon differences in the operating costs of the respective modes competing for this traffic.

Having determined that, with the few exceptions noted, the proposed rates are reasonably compensatory, the next most important consideration is whether these rates are lower than necessary to attract some of this traffic to the sea-land service. As stated, the evidence indicates that the sea-land service generally must have rates lower than those by rail in order to attract any substantial volume of this traffic; also that the proposed rates are no lower than necessary for that purpose. Historically, on coastwise traffic the rates between eastern territory and Gulf ports have long been on a lower level generally than the corresponding all-rail rates. As stated in *Deming Rates from Eastern Ports to the Southwest*, 264 I. C. C. 551, 559:

[309 I. C. C. 606] The steamship lines plying between north Atlantic and Gulf ports must, in order to operate successfully, participate in the handling of traffic to and from interior points. In order to participate in such traffic, the rates over such lines must be on a lower level than those over all-rail routes.

Moreover, section 307(d) of the act, in authorizing the Commission to establish through routes and joint rates in connection with water and rail carriers, provides that "where one of the carriers is a common carrier by water, the Commission shall prescribe such reasonable differentials as it may find to be justified between all-rail rates and the joint rates in connection with such common carrier by water." While that provision is not controlling here, where the proposed rates, voluntarily established, apply in connection with motor carriers and a water carrier, it appears indicative of the Congressional intent that, where necessary to permit an essential, efficiently operated water carrier to

participate in the economical movement of traffic, the service in connection with the water carrier should be accorded some advantage in the form of lower rates. There is, of course, a limit beyond which Pan-Atlantic cannot be expected to attract sea-land traffic at economical rates. We are satisfied that the proposed rates, with the exceptions noted, generally do not go beyond that limit.

There is indication that if the proposed rates are approved, the all-rail carriers intend to counter with reduced rates of their own. In such event, they should take into account the effect thereof upon the national transportation system and the implications of the national transportation policy, consideration of which is required by the established rules of rate making.

From the evidence presented, it is concluded that the proposed rates, except as indicated below, are not unlawful.

We find that 11 of the rates under investigation, on the commodities from and to the points shown in footnote 7, are not shown to be just and reasonable, and that the other rates here under investigation are lawful. An order will be entered requiring the cancellation of the rates found not shown to be lawful, and discontinuing the proceedings.

COMMISSIONER MCPHERSON *concurs in the result.*

COMMISSIONER FREAS, *dissenting in part:*

Although there is a substantial record, it does not depict in detail all of the facts and circumstances surrounding each of the approximately 469 reduced commodity rates

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7. Shipping carriers (empty barrels and bottles) from Daytona Beach to Philadelphia; canned goods from New Orleans to Baltimore and Rochester, from Gulfport to Philadelphia, and from St. Francisville to Miami; pulpboard from Bogalusa to New York, and from Kreole to New Brunswick, Wharton, and New York; and synthetic plastics from Baton Rouge to Baltimore and Rome.



here before us. Thus, the [309 I. C. C. 607] making of express findings as to each and every one of these rates is wholly impracticable.

Of vital importance in situations of this nature are the relative cost and service advantages and disadvantages of the contending carriers. These, according to the record, at times favor one form and at times the other. As the report points out, "On some traffic, particularly port-to-port traffic and certain other traffic subject to the higher single-trailer minima, Pan-Atlantic is the low cost agency; on other traffic, the railroads' costs are lower than those of Pan-Atlantic." How much falls in either of these categories cannot be precisely determined. Appendix A shows that on an out-of-pocket basis respondents are the low-cost carriers in but two of nine instances and on a fully-distributed basis in but three. It seems clear that the instances in which the railroads are the low-cost mode at least equal those in which Pan-Atlantic occupies that position. Service advantages and disadvantages are similarly distributed so that a general finding that the inherent advantages on the traffic are with any particular mode of transportation cannot be supported on this record.

Excepting in eleven instances, the majority approves differentially lower water than rail rates. Were it shown that service considerations were equal and that respondents were the low-cost form of transportation to the extent at least of these differentials, I would not disagree with such findings. However, except as a means of protecting the high-cost form of transportation, I cannot understand approval of differentials under the rail rates in those instances in which respondents are the high-cost mode.

That water transportation may need protection is not here controlling. It is for the Congress to provide special relief if a necessary form of transportation requires it; it is for us to deal ratewise with all modes in accordance with the standards given us by the Congress.

Approval of a differential to protect the high-cost form of transportation clearly does not comport with the provi-



sions of section 15a(3) of the Interstate Commerce Act, nor with the express provisions of the National Transportation Policy. While that Policy is cited in the report, I do not understand that it is contended that it by its express terms authorizes the fixing of a differential under the circumstances here. Rather, the statutory basis for the report seems to rest upon a construction of section 305(c) of the Act which reads in part:

Differences in the \* \* \* rates, \* \* \* of a water carrier in respect of water transportation from those in effect by a rail carrier with respect to rail transportation shall not be deemed to constitute unjust discrimination, prejudice, or disadvantage, or an unfair or destructive competitive practice, within the meaning of any provision of this Act.

[309 I. C. C. 608] To me this means that the mere fact of a difference shall not be taken to constitute unfair or destructive competitive practices. I find nothing to suggest that the Congress intended to immunize water carriers against charges of unfair or destructive competitive practices in all instances in which their rates are lower than those of the rail lines. Indeed, under such a construction there could not be any unfair or destructive competitive practice by water carriers, regardless of how far they reduced their rates or to what purpose.

In view of the foregoing, I can view the approval of a differential for the high-cost form of transportation in no other light than as "umbrella ratemaking," a practice which it is my understanding the Congress does not wish us to pursue and one which the Commission has said it does not sanction.

This much in explanation of my differences with the majority—there remains to be discussed what course should be followed. First, we should set forth as fully and clearly as is practicable our views as to the guiding principles in such situations. Since it is not practical on this record to apply those standards to each and every one of some 469 proposals and since the burden under the Act is on the

respondents, we should require the cancellation of these rates without prejudice to the refile of any that respondents believe conform to the standards we have set forth. This to me seems to be the only practical course and one that deals fairly with all concerned. The rates are now in effect and by allowing a reasonable time within which cancellation is to be made, respondents could make the new filings before the present rates were canceled, thus in no way disturbing the rate situation in instances which are justified. On the other hand, should respondents include, either inadvertently or because of intentional differences, rates which do not comport with the standards set forth, those rates would be subject to suspension and investigation.

The guiding principles to which reference has been made should in my opinion be as follows: Assuming substantial equality in service and an absence of special circumstances, respondents should be permitted to meet their competitors' rates whenever they can do so at rates that are compensatory. They should not be permitted to go below their competitors' rates unless they show that (1) rates lower than those of competing carriers are above respondents' full costs and that (2) respondents comprise the low-cost form of transportation. The second requirement is necessary only to prevent the high-cost form of transportation from undercutting the low-cost forms in instances where a rate of the low-cost form which exceeds full costs is nevertheless just and reasonable. Where services are unequal, the greater value to shippers of the more desirable service should be reflected in the rate relationship.

## APPENDIX B

## RATIONALE OF COST FINDING SECTION

*Cost Finding Section's comments on Pan-Atlantic's cost studies and criticisms:*

Respondent stated that its own costs were all inclusive. However, the record does not provide the basic data to verify this statement, and respondent's annual report does not show the expenses for the sea-land service separately from the total expenses for all services operated by Pan-Atlantic. The Commission should require that this separation with a proper allocation of overhead expense to the sea-land service and appropriate statistics be shown in respondent's annual report to the Commission so that in any future proceedings involving sea-land costs the basic expenses used by respondent may be verified. The costs were based on a 14-day round voyage covering 4 ports. Commencing at Houston, a vessel would stop at Tampa, Port Newark, Miami, and then return to Houston. Costs based on this operation were applied to voyages which included stops at New Orleans, Mobile, Philadelphia, and Jacksonville. According to the schedule introduced in I. & S. No. M-10698, exhibit 1, appendix X, two different sets of voyages are now in operation. One schedule provides for direct service between Port Newark and Houston with no intermediate stops. Another schedule provides service from Port Newark via Miami to New Orleans and return via Tampa to Port Newark. Both schedules provide for a 14-day round trip. The effect of the change in schedules on the consist of traffic and costs is not shown in the record.

In developing the vessel expenses respondent failed to provide a separation of expense between the time the vessel was in port and the time the vessel was at sea, but instead related all vessel expenses directly to ton-miles. This treatment results in understating the costs for shorter-than-average hauls and in overstating the costs for longer-than-

average hauls. From data available in the underlying working papers, it appears that for the 14-day voyage used for developing the costs, the time in port amounts to about 19 percent of the total. Where additional stops would be made this percentage would be even greater. The cost for the time in port should have been related to the number of loaded vans handled. The cost for the vessel while at sea should have been related to the loaded van-miles rather than the ton-miles in order for the final costs to reflect properly the different weight loads in each van.

Respondent used a factor of 75 percent for developing its vessel and port out-of-pocket expenses based on the utilization of the vans per voyage at the time of the cost study. Respondent feels that 100 percent of maximum practical utilization would be possible without additional vessel expense, and that, therefore, the 75 percent level of cost reflects what the cost would be if a 100 percent level of maximum practical utilization were reached. Respondent fails to recognize the fact that if the traffic available were to double, additional vessels would be required. Thus, over a long period the vessel costs would vary almost directly with traffic volume. In the absence of evidence justifying the use of a load factor greater than that actually experienced on the 5 test voyages, it is believed that the cost should be based on the loads actually experienced rather than on 100 percent of maximum practical utilization, which is reflected by use of the factor of 75 percent. Because data necessary to determine the out-of-pocket cost of vessel and port operations are not available, the Cost Finding Section believes that the direct expense before the addition of overhead is justified for use as an out-of-pocket level, and this has been used in the restatement of respondent's water costs by the Cost Finding Section.

[309 I. C. C. 611] Respondent used the ratio of general overhead to direct expenses based on operations of both Pan-Atlantic and Waterman Steamship companies combined. Although the overhead expenses may not be readily

separable as between the two companies and for the sea-land operations specifically, the proper amount of overhead to be allocated to the sea-land service can be obtained by special studies. In view of the unique type of operation represented by the sea-land service, it would seem that the latter procedure would be preferable to the use of an overall overhead ratio.

Respondent shows the cost of depreciation and interest on the cargo vans separately for refrigerator vans and general cargo vans, but it does not show the additional expense of operating the refrigerator vans either while in the terminal or on board the ship. Although such an expense is included in the total cost and apparently spread over all traffic, it would be preferable to reflect this expense separately.

Although respondent contends that it is its practice to top load those vans with less than average weights per shipment, it should be apparent that this is not always possible or practicable to do. For example, in the case of frozen foods or in the case of radios and television sets or other low density freight, it is unlikely that top loading would be practicable or even possible. A witness for the respondent testified that at Jersey City 35 percent of the local sea-land pickups of truckload freight received additional loading at the terminal, one truckload or volume shipload was handled per van, and that top loading consisted of less-truckload freight. So far as the Jersey City terminal is concerned, it would appear that in some instances it would be practicable to top load a volume shipment with another volume shipment, in which case, an allowance for platform handling shall be included.

In its restatement of respondent's costs the Cost Finding Section has given recognition to the fact that top loading of some low-weight truckload shipments is practiced by respondent. Where such additional loading has been considered to be feasible the average load experienced by respondent of 36,000 pounds has been used for computing the water line-haul cost, instead of the minimum weight per shipment

for shipments under 30,000 pounds. The average load of 36,000 pounds is used for all items where allowance is made for top loading because the record does not provide the average loads at which the various commodities actually moved. Allowance for heavier loading based on the latter information would be preferable. For those items where heavier loading would appear to be possible but where comparative rail costs have been computed for the same or approximate minimum weight per shipment, the water line-haul cost has been based on the minimum weight per shipment in order to provide comparability with the rail costs.

Respondent also contends that the connecting motor carriers top load the lighter weight shipments. The degree to which this may be practiced is not shown in the record. Therefore, in its restatement of respondent's connecting motor-carrier line-haul costs, the Cost Finding Section has based those costs on the minimum weight per shipment weighing up to 40,000 pounds. In its treatment of pickup and delivery expense respondent assumed an average weight of 36,000 pounds in many instances for shipments weighing in excess of 40,000 pounds, the maximum capacity of a van. This ignores the pickup or delivery cost for the remaining weight of the shipment. The Cost Finding Section believes that where a pickup or delivery cannot be made by the use of one cargo van, the pickup or delivery weight should be based on the weight of the shipment divided by the least number of cargo vans required to pro- [309 I. C. C. 612] vide such service. Thus, a 50,000-pound shipment would require two vans and the pickup or delivery service would be costed at 25,000 pounds.

In the Cost Finding Section's restatement of respondent's costs, the interchange expense for the connecting motor carriers has been computed at 50 percent of the pickup or delivery expense, as was done by respondent originally, rather than at 25 percent which respondent used in its revised cost presentation. In the absence of evidence developing the computation of the 25 percent factor, the



Cost Finding Section believes the factor of 50 percent to be representative of the relationship of interchange to pickup or delivery expense for truckload shipments.

In its brief respondent contends that the all-rail costs, including those introduced by respondent, should not be compared directly with the sea-land costs because:

1. All-rail costs and sea-land costs are based on different periods.

2. All-rail costs are based on territorial averages while sea-land costs reflect specific conditions. Use of territorial average rail costs understates terminal expense for the large metropolitan areas.

3. Sea-land costs are affected by, among other things, the amount of connecting motor-carrier haul and the presence and existence of a back-haul in the connecting-carrier movement.

4. At the higher weights, the method of operation between sea-land and rail is radically different.

The Cost Finding Section believes that all-rail costs are capable of being compared directly with the sea-land costs for the following reasons:

1. The record shows that respondent adjusted the rail costs to a January 1, 1958 level of wages and prices to provide comparability with the sea-land costs computed for a 1957 level.

2. If respondent believed the rail terminal costs for the large metropolitan areas to be understated it should have endeavored to adjust the costs for such understatement. The large rail terminals are involved in many of the comparative all-rail movements, but there are also many movements involving small and medium size terminals. If costs are to be adjusted upward for the large terminals, they should be adjusted downward for the small terminals.



3. The fact that sea-land costs are affected greatly by the length of connecting motor-carrier hauls and by back hauls of the connecting motor carriers is a natural result of this type of operation. The fact that the rails do not share the same disabilities is no reason that the costs should not be compared.

4. The costs for higher weight shipments reflect the operating conditions or advantages for each mode of transportation. Because the railroads are able to obtain twice the weight load or more in a boxcar that can be loaded in a sea-land van without substantially increasing the cost is no reason why direct comparison of costs is invalid.

*Cost Finding Section's comments on protestants' cost studies and criticism:*

The out-of-pocket level of expense for the water movement has been discussed previously herein. In reply to protestants' use of 5 later voyages for computing water costs, respondent stated that there were 4 even later voyages which operated in excess of 75 percent loaded and that the average for the 14 voyages, excluding the 5 used by respondent, amounted to 75.5 percent, which is roughly the same as the average of the voyages used by respondent. Considering the above facts, respondent's use of the original 5 voyages for development of the tonnage handled is considered to be proper. Respondent has shown the fuel cost at sea to be considerably different from the fuel cost in [309 I. C. C. 613] port, and protestant is in error in not reflecting the difference in this cost. Tests made by respondent and based on actual operating experience show that an allowance for overtime of 45 percent, rather than 50 percent used by protestants, is proper.

In view of the fact that the Pan-Atlantic costs were based on operations in the latter part of 1957 and motor-carrier costs were adjusted to a 1957 level, protestants' contention that rail costs as of January 1, 1957, are proper

## APPENDIX A

## RATES, COSTS, AND COST RATIOS

Rates and costs in cents per 100 pounds; ratios in percents; minimum weights in 1,000 pounds; SL is Sea-Land; OP is out-of-pocket; FD is fully distributed; PA is Pan-Atlantic; MC is motor carrier; AR is all-rail

	Origins and Destinations	Sea-Land		OP Costs			FD Costs			Ratios SL Rates to Costs		All-rail Rate and Costs				Ratios SL to AR Costs	
		Min.	Rate	PA	MC	Total	PA	MC	Total	OP	FD	Min.	Rate	OP	FD	OP	FD
Frozen fruit concentrates	Dade City, Fla., to Boston, Mass.	<sup>1</sup> 36	159	55.2	53.7	108.9	63.9	79.9	143.8	146	111	36	168	171.1	199.3	64	72
		<sup>1</sup> 80	141	55.2	53.7	108.9	63.9	79.9	143.8	129	98	120	145	65.3	93.5	167	154
Citrus pomace without syrup	Tampa, Fla., to Boston, Mass.	40	106	52.0	39.6	91.6	60.2	55.5	115.7	116	92	40	112	90.9	120.2	101	96
		<sup>2</sup> 80	92	52.0	39.6	91.6	60.2	55.5	115.7	100	80	60	97	67.1	96.4	137	120
Synthetic plastics	Baton Rouge, La., to Berlin, Conn.	<sup>3</sup> 70	128	58.4	41.8	100.2	67.6	62.9	130.5	128	98	70	133	64.4	95.7	156	136
		40	161	51.1	38.4	89.5	59.2	59.5	118.7	180	136	—	—	—	—	—	—
Aluminum articles	Massena, N. Y., to Dallas and Fort Worth, Tex.	30	228	73.8	119.7	193.5	85.5	157.8	243.3	118	94	30	241	142.6	180.2	136	135
		40	214	55.7	98.3	154.0	64.5	136.4	200.9	139	107	40	208	112.5	150.0	137	134
Coffee	Freehold, N. J., to Jacksonville, Fla.	30	124	49.7	71.7	121.4	57.5	100.3	157.8	102	79	30	131	84.9	107.5	143	147
Copper rods	Bayway, N. J., to Tampa, Fla.	40	129	64.6	—	64.6	74.8	—	74.8	200	172	50	140	75.9	100.3	85	75

## Weights Used in Computing Costs:

<sup>1</sup> 35,000 pounds used because of maximum load per trailer in refrigerated vans in New Jersey—Docket I. & S. No. 6985.

<sup>2</sup> 40,000 pounds used as load per trailer when two trailers used for 80,000 pounds.

<sup>3</sup> 35,000 pounds used as load per trailer when two trailers used for 70,000 pounds.

is difficult to justify. The fact that protestants subsequently introduced rail costs for I. & S. No. M-10698 based on I. C. C. Statement No. 2-58, which reflect a level for wages and prices as of January 1, 1958, would tend to nullify the contention that the costs for the earlier period were appropriate. As noted previously, respondent also restated the rail costs for the movements in I. & S. No. M-10415 et al. based on Statement No. 2-58. Unfortunately, it did not do so for the movements in I. & S. No. M-10698. Protestants' rail costs in I. & S. No. M-10698 are deficient in that the fully-distributed expenses are shown for only a limited number of items. Therefore, in order to provide both out-of-pocket and fully-distributed costs for all items in its own restatement of respondent's costs, the Cost Finding Section has used the rail costs from respondent's exhibit 123 in I. & S. No. M-10415 and from exhibit 7 in I. & S. No. M-10698. Although protestants' rail costs in I. & S. No. M-10698 are somewhat lower than those shown by respondent, the difference is not considered enough to affect greatly the comparative results. Protestants' rail costs are further deficient in that they do not include allowance for loss and damage claim payments.

Respondent acknowledged that the use of Pocahontas region costs were proper for movements through that region and used such costs in its restated exhibit. In reply to protestants' contention that rail costs should be based on maximum possible loads, respondent introduced an exhibit based on Interstate Commerce Commission waybill studies for the year 1956, which showed actual loads per car to be considerably less than the maximum loads shown by protestants. The use of maximum possible loads for costing purposes has little value as it is the actual load at which the traffic moves that determines the cost per 100 pounds.

Concerning the representativeness of the motor carriers used in its cost study, respondent stated that it computed costs for the principal motor carriers which handle sealand traffic, although one of the larger connecting carriers

was omitted because adequate cost data were not available for that carrier. Respondent admitted that costs for carriers handling frozen food would be somewhat higher than those for general commodities, but stated that the difference in cost would not be large enough to change the results of the study because the revenues from the frozen food traffic greatly exceed the costs. As a rough indication of what the increased cost of frozen foods would be, based on total expense per vehicle-mile, respondent computed the overall expense per vehicle-mile for 5 carriers of refrigerated food to be 35 cents. This amount is 4 cents per vehicle-mile greater than the average line-haul cost alone of 31 cents per vehicle-mile for the 25 carriers used in respondent's cost study. The actual cost per vehicle-mile would be somewhat less because the 35-cent figure includes terminal cost as well as line-haul cost. Although respondent should have included an allowance for the cost of operating the refrigerated vans while in possession of the motor carriers, the Cost Finding Section believes that the motor-carrier costs used by respondent in its cost presentation are sufficiently representative for the purposes of these proceedings.

# Order

At a Session of the INTERSTATE COMMERCE COMMISSION,  
Division 3, held at its office in Washington, D. C. on the  
10th day of February, A. D. 1960.

INVESTIGATION AND SUSPENSION DOCKET No. M-10415  
COMMODITIES—PAN-ATLANTIC STEAMSHIP CORPORATION

INVESTIGATION AND SUSPENSION DOCKET No. M-10430  
ADIPIC ACID—BOUTTE & LULING, LA., TO EAST

INVESTIGATION AND SUSPENSION DOCKET No. M-10431  
COMMODITIES—SEA-LAND—LOUISIANA TO EAST—  
P. A. S. S. Co.

INVESTIGATION AND SUSPENSION DOCKET No. M-10434  
VARIOUS COMMODITIES—N. J., N. Y. & PA. TO FLA. & TEXAS

INVESTIGATION AND SUSPENSION DOCKET No. M-10437  
PULPBOARD-FIBERBOARD—EVADALE, TEX., TO NEW YORK, N. Y.

INVESTIGATION AND SUSPENSION DOCKET No. M-10469  
ALUMINUM ARTICLES—MASSENA, N. Y., TO TEXAS

INVESTIGATION AND SUSPENSION DOCKET No. M-10582  
VARIOUS COMMODITIES, SEA-LAND, EAST TO FLA., LA., TEX.

INVESTIGATION AND SUSPENSION DOCKET No. M-10599  
PAPER—SOUTH TO N. Y. AND N. J.

INVESTIGATION AND SUSPENSION DOCKET No. M-10602  
COMMODITIES—EAST TO ALA., FLA., AND TEXAS

INVESTIGATION AND SUSPENSION DOCKET No. M-10624  
FOODSTUFFS—LA. AND MISS. TO CONN., MD., MASS.,  
N. Y., PA., AND R. I.

INVESTIGATION AND SUSPENSION DOCKET No. M-10679  
FEED—FLORIDA TO NEW ENGLAND AND TRUNK LINE TERR.

INVESTIGATION AND SUSPENSION DOCKET No. M-10698  
SEA-LAND—PAN-ATLANTIC S. S. CORP.—PLASTICS  
& WIRE CLOTH

INVESTIGATION AND SUSPENSION DOCKET No. M-10716  
BRUSHES—CONN., MASS., AND N. Y. TO TEXAS

INVESTIGATION AND SUSPENSION DOCKET No. M-10721  
VARIOUS COMMODITIES—PAN-ATLANTIC STEAMSHIP  
CORPORATION

INVESTIGATION AND SUSPENSION DOCKET No. M-10722  
SEA-LAND—VARIOUS COMMODITIES—P. A. S. S. Co.

INVESTIGATION AND SUSPENSION DOCKET No. M-10825  
COMMODITIES—PAN-ATLANTIC SEA-LAND SERVICE

INVESTIGATION AND SUSPENSION DOCKET No. M-10945  
COMMODITIES—PAN-ATLANTIC STEAMSHIP CORP.

INVESTIGATION AND SUSPENSION DOCKET No. M-10946  
COMMODITIES—EAST, SOUTH & SOUTHWEST

INVESTIGATION AND SUSPENSION DOCKET No. M-10963  
VARIOUS COMMODITIES—PAN-ATLANTIC SEA-LAND SERVICE

INVESTIGATION AND SUSPENSION DOCKET No. 6847  
FRESH OR FROZEN FOODS—SEA-LAND—PAN-ATLANTIC  
S. S. CORP.

INVESTIGATION AND SUSPENSION DOCKET No. 6848  
PAPER—ALA. TO FLA. AND FLA. TO TEXAS

INVESTIGATION AND SUSPENSION DOCKET No. 6870  
ALUMINUM & PETROLEUM—TEXAS & LA. TO FLORIDA

INVESTIGATION AND SUSPENSION DOCKET No. 6894  
COMMODITIES—PAN-ATLANTIC, FLA., LA. & TEXAS

INVESTIGATION AND SUSPENSION DOCKET No. 6985  
FROZEN CITRUS PRODUCTS—FLORIDA TO OFFICIAL  
& NEW ENGLAND PORTS

*It appearing,* That by orders in the above-entitled proceedings the Commission entered upon investigations concerning the lawfulness of the rates, charges, regulations, and practices stated in certain schedules described in said orders and suspended the operation of the schedules for a period of seven months, said schedules now being in effect;

*It further appearing,* That a full investigation of the matters and things involved has been made, and that said division, on the date thereof, has made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

*It is ordered,* That the respondents herein be, and they are hereby, notified and required to cancel the said schedules, to the extent found not shown to be lawful in the said report made a part hereof, on or before March 22, 1960, in the manner prescribed by the Commission under the Interstate Commerce Act, and that these proceedings be, and they are hereby, discontinued.

By the Commission, division 3.

HAROLD D. MCCOY,  
Secretary.

(SEAL)



## INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET NO. 6834<sup>1</sup>

PIGGY-BACK RATES—BETWEEN EAST AND TEXAS

Decided

1. In I. & S. No. 6834, and F. S. A. No. 34227, proposed reduced trailer-on-flat-car rates on numerous commodities between points in Official Territory, on the one hand, and, on the other, Dallas and Ft. Worth, Tex., found unjust and unreasonable in certain instances, and in other instances, found lawful; and fourth-section application for relief, in connection with rates found unjust and unreasonable, denied, and in connection with rates found lawful, granted. Rates found unlawful ordered canceled, and proceeding discontinued.
2. In No. 32313, sea-land rates except one of Pan-Atlantic Steamship Corporation, and rail-water-rail rates of Seatrain Lines, Inc., on numerous commodities from origins in the east to Dallas and Ft. Worth, Tex., found not shown to be unjust and unreasonable. Unlawful rate ordered canceled and proceeding discontinued.

*Edwin N. Bell, James A. Bistline, J. P. Canny, Robert P. Falet, John P. Ganly, Ernest D. Grinnell, Jr., Carl Helmetag, Jr., Bernard Hulkower, Eugene E. Hunt, William Q. Keenan, Howard D. Koontz, Donald McDevitt, J. Edgar McDonald, Léo H. Pou, Clarence Raymond, Charles P. Reynolds, Albert B. Russ, Jr., Walter G. Treanor, and R. S.*

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1. This report also embraces Docket No. 32313, Commodities—Pan-Atlantic—Between East and Texas, and fourth-section application No. 34227, Trailer-On-Flat-Car Service Between Official Territory and Dallas-Fort Worth, Tex.

*Trigg*, for rail carriers, respondents in I. & S. No. 6834, applicants in fourth-section application No. 34227, and interveners in opposition in No. 32313.

*William H. Armbricht, L. A. Parish, and Warren Price, Jr.*, for Pan-Atlantic Steamship Corporation and motor carrier participants in Pan-Atlantic tariffs, respondents in No. 32313, and protestants in I. & S. No. 6834 and fourth-section application No. 34227.

*S. S. Eisen* for Seatrain Lines, Inc., respondent in No. 32313, and protestant in I. & S. No. 6834 and fourth-section application No. 34227.

*Charles W. Bucy and Leonard M. Shinn* for the Secretary of Agriculture of the United States, intervener in support of protestants in I. & S. No. 6834, and in support of respondent, Pan-Atlantic, in No. 32313.

*Ernest M. Sharp* for the Houston Port Bureau, Inc., *Arthur L. Winn, Jr., Samuel H. Moerman, and Walter J. Myskowski* for the Port of New York Authority, *James J. Fisher*, Port Agent for the City of Providence, and *Louis A. Schwartz* for the New Orleans Traffic and Transportation Bureau, protestants in I. & S. No. 6834 and fourth-section application No. 34227, and interveners in support of respondent, Pan-Atlantic, in No. 32313.

*James E. Haydon* for the Eastern Central Motor Carriers Association, Inc., protestant and intervener in opposition to all of the respondents.

### **Report Proposed by Charles E. Morgan, Hearing Examiner**

By schedules filed to become effective November 14, 1957, and later in I. & S. No. 6834, the rail carrier respondents proposed to establish new reduced rates listed in 27 tariff items on numerous commodities in trailer-on-flat-car

(TOFC) service between<sup>2</sup> points in the East, on the one hand, and, on the other, Dallas and Ft. Worth, Tex. Upon protest thereto, the operation of the schedules was suspended to and including June 13, 1958. The effective date of the proposed schedules has been postponed voluntarily by the rail carriers, and the proposed TOFC rates have not gone into effect.

By their fourth-section application No. 34227, the rail carriers, respondents herein, are applicants for fourth-section relief, seeking authority to establish and maintain the above proposed TOFC rates without observing the long-and-short-haul provisions of section 4 of the Interstate Commerce Act. The rail carriers propose to continue to maintain certain higher rates to and from intermediate origins and destinations. The proposed TOFC rates and the application for fourth-section relief in connection therewith are opposed by the Secretary of Agriculture of the United States, the Pan-Atlantic Steamship Corporation, (called Pan-Atlantic), the Seatrain Lines, Inc., (called Seatrain), the Eastern Central Motor Carriers Association, Inc., (called Eastern Central), the Houston Port Bureau, Inc., the Port of New York Authority, the City of Providence and the New Orleans Traffic and Transportation Bureau. No shippers or receivers located at points intermediate to the origins and destination herein opposed the granting of fourth-section relief.

In No. 32313, by order dated November 8, 1957, of the Board of Suspension of the Commission, an investigation was instituted into the rates of Pan-Atlantic listed in 22 tariff items in connection with its sea-land service on numerous commodities from origins in the East to Dallas and Ft. Worth. Also in No. 32313, by first supplemental order dated December 18, 1957, of the Board of Suspension of

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2. With one exception the proposed rates are southbound from points in the East to Dallas and Ft. Worth. There is one northbound rate on bags, cotton, new or old, etc., from Dallas and Ft. Worth to Baltimore, Md. This northbound rate also applies from and to other points taking the same rates as provided in the tariff.

the Commission, the investigation was broadened to include certain rates of Seatrain listed in 3 tariff items in connection with its rail-water-rail service from eastern origins to Dallas and Ft. Worth. The sea-land and Seatrain rates are opposed by the rail carriers and by Eastern Central.

The Pan-Atlantic and Seatrain rates are in effect and are under investigation only. The proposed TOFC rates were published by the rail carriers to reflect a parity with the sea-land rates. Since the sea-land rates are substantially the same as the Seatrain rates, the proposed TOFC rates also are substantially the same as the Seatrain rates. Since the railroads are parties to the Seatrain rates to the extent that such rates apply from inland points, the railroads are technical respondents in No. 32313, but the railroads are not defending the Seatrain rates.

It was agreed by the parties that the three proceedings herein be the subject of a single report, and that all of the evidence in the proceedings entitled, I. & S. No. M-10415, et al., *Commodities—Pan-Atlantic Steamship Corporation*, could be referred to in the present proceedings and to the extent relevant would be competent evidence herein. A proposed report has been issued in I. & S. No. M-10415, et al., and much of that report, such as its description of the sea-land service, is pertinent herein. Generally, the matters stated in the proposed report in I. & S. No. M-10415, et al., will not be repeated herein except where necessary for clarification or emphasis.

**THE BACKGROUND OF THE TOFC AND OTHER RATES.** The railroads published the proposed TOFC rates on a parity with the current rates for the sea-land service, upon the belief of the rail carriers that these two operations, which have many of the characteristics of overland motor carrier service, are, from a quality standpoint, equivalents, and that therefore in the absence of special circumstances they should be priced at the same levels. Generally, Pan-Atlantic and Seatrain contend that the water carrier services are entitled

to rates differentially lower than the rates of the overland carriers. Eastern Central takes the position that TOFC rates generally should be continued on the level of the motor common carrier rates, and that if TOFC rates are reduced that motor carrier rates also will have to be reduced. It is the view of Eastern Central that the railroads in their proposed TOFC service herein may not find it absolutely necessary to meet the exact Pan-Atlantic rates, and that the record may justify some differential of the Pan-Atlantic rates under the TOFC rates although a lesser, and more reasonable, differential than presently maintained.

Rail TOFC service between points in the southwest and points in the western part of Official Territory including Pittsburgh, Pa., was inaugurated on June 13, 1956. Later, on September 8, 1956, the Official Territory origins were extended to include points east of Pittsburgh. For this service rates were published generally on a parity with the prevailing motor carrier rates. When Pan-Atlantic inaugurated its sea-land service between the southwest and the east in the fall of 1957, the railroads were convinced that they could not compete in view of the fact that the sea-land rates were generally on the level of the Seatrain rates, whereas the TOFC rates were on the considerably higher level of the motor carrier rates.

The rail carriers decided to publish TOFC rates on the same level as the sea-land rates, but not between all origins and destinations. It was their intention to publish the TOFC rates herein from selected points in Official Territory to Dallas and Ft. Worth as a very limited pilot type of effort to meet the sea-land rates. A wholesale reduction in the TOFC rates not only would have disturbed competitive patterns between the railroads and the motor common carriers, but also would have created competition among the rail services, because the TOFC rates on the sea-land basis in many instances would be lower than the all-rail box-car rates.

Since the proposed TOFC rates were made applicable only to the destinations of Dallas and Ft. Worth, their publication created fourth-section problems. Avoidance of these problems would have entailed substantial reductions in rail revenues at intermediate points of origin and destination well outside of the sphere affected by the sea-land competition. To Dallas and Ft. Worth the railroads believe that competition compelled the proposed TOFC rates.

The general rate situation among the various carriers herein is illustrated by the rates on candy and confectionery. For example, from Naugatuck, Conn., to Dallas and Ft. Worth, the sea-land rate is 207 cents,<sup>3</sup> minimum 36,000 pounds, and this is also the proposed TOFC rate. The Seatrain rate from and to the same points is 208.25 cents, minimum 65,000 pounds. The present all-rail box-car rate is 220 cents, minimum 36,000 pounds, and the corresponding all-truck rate in effect prior to December 9, 1957, is 284 cents, minimum 23,000 pounds.

As seen, the proposed TOFC rates, in reflecting parity with sea-land rates, thereby at times go below Seatrain rates. The sea-land rates are not always the same as the Seatrain rates, and there are differences also in the minimum weights. In part the differences between Seatrain and sea-land rates are caused by the variations in the application of general increases on the single-factor sea-land and commodity rates and on the combination rail-water-rail Seatrain rates. Where the Seatrain rates are competitive with the rates of the overland carriers, it is the intention of Pan-Atlantic to eliminate minor differences between its rates and the rates of Seatrain by adjusting the sea-land rates to the level of the Seatrain rates. In those instances where Pan-Atlantic does not consider the Seatrain rates to be competitive with the rates of the overland carriers, Pan-Atlantic intends to maintain differentials so that the sea-

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3. Rates are stated per 100 pounds and include Ex Parte 206-A increases where applicable.



land rates are about 5 percent under the overland competitive rates.

**THE COST EVIDENCE.** Extensive cost evidence was submitted by the rail carriers and by Pan-Atlantic, and as requested by the parties this evidence has been considered by our Cost Finding Section, which has restated the TOFC costs and the sea-land costs. Necessarily, the restatement is too detailed to be reproduced in its entirety in this report, but it will be available for examination by the parties, and is shown in part in Appendix "A" hereto. The rationale of the Cost Section of the restatement of the TOFC costs is contained in Appendix "B" hereto. The rationale of the Cost Section concerning the restatement of the sea-land costs is the same as used in connection with the proceedings entitled, I. & S. No. M-10415, et al., and that rationale was appended to the proposed report in those proceedings, and it will not be repeated here.

**THE SEA-LAND RATES.** The sea-land rates herein as shown in the restatement, with one exception, exceed out-of-pocket costs, and they range as high as 258 percent of out-of-pocket costs. The one exception is the rate of 216 cents, minimum 20,000 pounds, on paint, etc., from Baltimore, Md., to Dallas and Ft. Worth, for which the restated out-of-pocket sea-land cost is 217 cents, or 1 cent more than the rate. By the usual standards, since this rate does not cover out-of-pocket costs, it should be considered as not compensatory and a finding should be made that it is unjust and unreasonable. There is no corresponding proposed TOFC rate, minimum 20,000 pounds. There are under investigation herein both a sea-land and a proposed TOFC rate on paint, etc., from Baltimore of 187 cents, minimum 36,000 pounds, which rate exceeds out-of-pocket costs by sea-land and by TOFC. Most of the sea-land rates herein also exceed fully-distributed costs.



The restated sea-land costs, both out-of-pocket and fully distributed, are below the restated TOFC costs for all movements of comparable weight as computed for railroad-owned flat cars, which cars in these proceedings have a capacity of a single trailer and are equipped with tie-down devices. In connection with flat cars, not presently owned, but leased by the railroads, which cars are designed to hold two trailers with special hold-down devices (called TTX cars), the restated sea-land costs are below the restated TOFC costs for all movements except two of the 66 movements listed in the restatement. It is concluded that, for the movements herein, generally sea-land is the lower cost service than TOFC.

Pan-Atlantic inaugurated its trailership service to and from Houston, Tex., in October, 1957. In sea-land service in 1957, there were shipments made in connection with 13 of the 22 Pan-Atlantic tariff items under investigation herein. No shipments were made at rates in 9 of these tariff items, and in connection with 7 of the 13 active items, there was a total of only 15 shipments. The record does not disclose the amount of traffic handled at rates in the other 6 active items, but on the whole the amount of traffic handled in sea-land service at rates in these 22 items in 1957, is considered by Pan-Atlantic to have been negligible tonnage-wise. The record does not show that any traffic has moved via Pan-Atlantic at rates as high as the competing rail rates, either all-rail boxcar or TOFC.

**THE PROPOSED TOFC RATES.** The proposed TOFC rates, as shown in the restatement of costs by the Cost Section, equal or exceed the restated out-of-pocket TOFC costs computed for hauls with so-called average circuitry (with mileage figures including the short-line distance between the origin and the Chicago and East St. Louis gateways and between these gateways and the destination, increased by 13 percent as an allowance for average cir-

cuity), for all listed movements by TTX cars, and for all but 6 of 66 listed movements by railroad-owned cars. The proposed TOFC rates equal or exceed the fully distributed costs for 43 movements by TTX cars and for 14 movements by railroad-owned cars. A greater number of trailers is carried on TTX cars than on railroad-owned cars.

The six movements in railroad-owned cars which do not return out-of-pocket costs are electric switch boxes from Newark, N. J., rate 240 cents, minimum 24,000 pounds, restated out-of-pocket cost 249 cents, ratio of rate to cost 96, foodstuffs from New York, N. Y., rate 222 cents, minimum 24,000 pounds, out-of-pocket cost 249 cents, ratio of rate to cost 89, laundry sour from Baltimore, Md., rate 169 cents, minimum 36,000 pounds, out-of-pocket cost 172 cents, ratio of rate to cost 98, laundry sour from Baltimore, rate 195 cents, minimum 24,000 pounds, out-of-pocket cost 236 cents, ratio of rate to cost 83, alcoholic liquors from Baltimore, rate 267 cents, minimum 20,000 pounds, out-of-pocket cost 276 cents, ratio of rate to cost 97, and alcoholic liquors from Philadelphia, rate 280 cents, minimum 20,000 pounds, out-of-pocket cost 283 cents, ratio of rate to cost 99.

On the movement of laundry sour from Baltimore in TTX cars at the rate of 195 cents, minimum 24,000 pounds, the out-of-pocket cost as shown in the restatement is 195 cents. Therefore, if only one shipment moved in railroad-owned cars, where the out-of-pocket cost is 236 cents, and other shipments moved in TTX cars at the cost of 195 cents, the result would be an overall failure to meet out-of-pocket costs. It is concluded that the TOFC rate of 195 cents, minimum 24,000 pounds, on laundry sour from Baltimore is not shown to be compensatory, and a finding should be made that it is not shown to be just and reasonable. Since the proposed TOFC rates are not in effect, it is not possible to estimate with any degree of accuracy the traffic which may move on any specific TOFC rate.

**THE SEATRRAIN RATES.** The investigation herein of Seatrain rates is limited to three commodity groups of rates, which are briefly described as linoleum, ammunition, and candy and confectionery. The first commodity group is more generally described as floor covering or related articles, including carpets, mats, rugs, coverings, and linoleum. The rates on linoleum under investigation herein range from 35.5 to 40.6 percent of the Docket-28300 first-class rail-water-rail rates. In Docket No. 31547, *William Volker & Company of Texas, Inc., et al. v. Central Railroad Company of Pennsylvania, et al.*, the complainants assailed the rail-water-rail rates on linoleum, including from and to the origins herein. By report and order therein of the Commission, decided February 3, 1958, 302 I. C. C. 757, it was found that the said rates for the future were unjust and unreasonable to the extent that they exceed the contemporaneous uniform classification basis. Rates in conformity with that order, on the basis of 35 percent of first class, were published effective May 15, 1958. These rates, now in effect, are on a basis lower than that reflected by the Seatrain rates on linoleum under investigation herein. Accordingly, this phase of the investigation of Seatrain rates is moot and should be discontinued.

The rates of Seatrain on ammunition under investigation herein are from Edgewater, N. J., to Dallas and Ft. Worth on traffic originating at Bridgeport and New Haven, Conn. These proportional rates, when added to the all-rail factors from origin to Edgewater, produce combination rail-water-rail rates to Dallas and Ft. Worth of 295 cents and 300 cents, minimum 40,000 pounds. These commodity rates alternate with higher rates, minimum 30,000 pounds, not here under investigation, which are based on exceptions to the class rates. The Seatrain commodity combination rates, minimum 40,000 pounds, are related to the corresponding all-rail commodity rates<sup>4</sup> by lesser differentials

4. Reference to all-rail rates means to existing all-rail rates, and does not refer to the proposed TOFC rates.

than the Seatrain exceptions class rates are related to the corresponding all-rail exceptions class rates. The differential of 70 cents per 100 pounds of the rail-water-rail 30,000-pound rates under the corresponding all-rail rates results from the class rates prescribed or approved in Docket 13535. The commodity combinations, minimum 40,000 pounds, reflect differentials of 39 cents, or 56 percent, and 34 cents, or 49 percent, respectively from Bridgeport and New Haven, of the class rate differential.

During 1957, Seatrain obtained a total of 3 cars of ammunition from Bridgeport to Dallas and Ft. Worth, and no cars from New Haven. One of the three cars moved at the 30,000-pound rate and the other two cars at the 40,000-pound rate. Under the existing rates Seatrain participated in only a very small portion of the ammunition traffic. Obviously, if the ammunition differentials are replaced by rate equalization, Seatrain's competitive position will be worsened considerably.

The rates of Seatrain on candy and confectionery under investigation herein are from Edgewater, N. J., to Texas City, Tex., on shipments coming from specified origins in Connecticut, Massachusetts, New Jersey, New York, and Pennsylvania. These proportional rates when added to the all-rail factors to and from the ports produce combination rates subject to minimum weights of 50,000 and 65,000 pounds, which alternate with certain class rates, minimum 36,000 pounds.

The existing all-rail rates on candy and confectionery are exceptions class rates, minimum 36,000 pounds. They are lower than the rail-water-rail class rates, minimum 36,000 pounds. These all-rail rates are also lower than some of the Seatrain commodity combination rates, minimum 50,000 pounds. The Seatrain commodity combination rates, minimum 65,000 pounds, are lower than the existing all-rail exceptions class rates, minimum 36,000 pounds, by 5 cents at Camden, N. J., and Philadelphia, Pa., by 9 cents

at Boston, Cambridge, Malden, Mansfield and Milton, Mass., and Reading, Pa., by 11 cents at Naugatuck, Conn., and by 12 cents at Brooklyn, N. Y.

Of the fourteen origins for candy herein, in 1937, Seatrain obtained only a total of four carloads, each over 65,000 pounds, from Mansfield and none from the other origins. Thus, Seatrain participated in only a very small portion of the candy traffic. Obviously, if the candy differentials favorable to Seatrain are replaced by rate equalization, Seatrain's competitive position will be worsened considerably.

No evidence was introduced by Seatrain or by any of the other parties herein concerning the cost of the Seatrain service or the compensatory nature of its rates. While it was agreed by the parties as to the matter of procedure, that the annual reports of all parties might be referred to, and materials therefrom used without proof of authenticity, subject to objections as to relevancy and materiality only, no specific reference to the Seatrain reports was made at the hearing. On brief, Seatrain states that reference to its annual reports clearly depicts the compensatory nature of its existing rates under investigation herein. It is concluded that the Seatrain rates are not shown to be non-compensatory.

It is concluded further that on this record it cannot be determined which is the low cost carrier as between Seatrain and any one of the other carriers on specific traffic movements herein, because there are no studies of Seatrain costs for specific movements. Therefore, to the extent that the relationships of another carrier's costs to Seatrain's costs in part would justify findings as the necessity for, or appropriate measure of, differentials between the rates of Seatrain and the rates of another carrier herein, no such findings can be justified on this record.

**WATER CARRIERS AND THE NATIONAL DEFENSE.** Many coastwise water carriers have not resumed operations since World War II. Prior to that time there were about 19

deep-water common carriers operating in the Atlantic-Gulf coastwise trades, employing about 139 vessels. In 1940, these water carriers transported over 8,500,000 tons of cargo. Today, there are only two of these carriers operating in this trade, namely Seatrain and Pan-Atlantic, which operate, respectively, six and four vessels. Between 1939 and 1956, the tonnage handled by class I railroads in the United States increased 160.5 percent, and the tonnage handled by class I motor carriers increased 545.6 percent, but excluding bulk oil carried by Seatrain and Pan-Atlantic, the tonnage handled by water carriers in the Atlantic-Gulf coastwise trade suffered a decrease of 79 percent.

Pan-Atlantic estimates that Seatrain operating as at present with full capacity would transport about 1,000,000 net tons per year, and that Pan-Atlantic would transport about 800,000 net tons per year. The total for the two water carriers would be 1,800,000 net tons, compared with over 8,500,000 net tons transported by the water carriers in the same trade prewar.

The United States Maritime Administration stated in a 1955 review in part:

In short the crux of the coastwise-intercoastal shipping problem is in the break-bulk dry-cargo trade today as it was before the war. The re-establishment and preservation of this segment of the domestic fleet is of vital national defense importance if the immediate needs of a future grave national emergency are to be met. It is obvious that the ready availability of ships employed in domestic operations may well be a critical factor in any initial military or civil defense operation of the United States occasioned by a future atomic or thermo-nuclear war.

Further, an economically sound, low-cost domestic fleet will continue to make important contributions to the economic growth and development of the United States as a whole and a balanced national transportation system in particular.



Traditionally water rates, including water-rail and water-motor rates, have been maintained at levels differentially lower than all-rail rates, principally because of the inherent disadvantages in the water services of uncertainty (perils of the sea), slower transit time, and infrequency of sailings. The last major consideration of the rates of the Atlantic-Gulf coastwise water carriers was in the *Class Rate Investigation, 1939*, Docket 28300, 286 I. C. C. 5 (1952). Therein the Commission prescribed maximum reasonable first-class rates on ocean-rail traffic, also maximum reasonable percentage relations of the lower classes to first class, between North Atlantic ports and interior points in eastern seaboard territory, on the one hand, and, on the other, New Orleans and Baton Rouge, La., Texas Gulf ports, and interior points in the southwest. These prescribed maximum class rates were designed to preserve the then existing differentials of the ocean-rail rates under the all-rail rates. The maximum water rates prescribed therein were applicable exclusively to the Seatrain nonbreak-bulk service, and to the ocean-rail break-bulk water services of Pan-Atlantic, and Newtex Steamship Company, a line which resumed operations in the post-World-War-II period in the coastwise trade, but which ceased operating in 1956.

**THE COMPARATIVE VALUES OF THE SERVICES.** From the standpoint of the shipper, the TOFC service and the sea-land service are similar in that both provide door-to-door motor carrier service, that is, the shipment leaves the consignor in a motor carrier trailer and arrives at the door of the consignee in the same container, the motor carrier trailer. In TOFC service, the trailer is moved on railroad flat cars, and in sea-land service the trailer body or box is moved on a trailer-ship, during the course of the line-haul movement. Therefore, both TOFC and sea-land are similar in many respects to all-truck service.

Seatrain service is very similar to all-rail boxcar service in that the Seatrain service offers the shipper the transportation of his lading in a rail car from consignor to con-



signde. To the extent that all-rail service has certain service disadvantages, such as in the case of a shipper not located on a private siding, these disadvantages also generally beset the Seatrain service. Seatrain at present offers service between the ports of Edgewater, N. J., on the one hand, and, on the other, Texas City, Tex., and Belle Chasse, La., using freight cars as containers. Seatrain contemplates inauguration of a new service which it calls "seamobile", which will be similar to Pan-Atlantic's sea-land service. Seamobile would use new containers which could be transferred readily between Seatrain vessels, highway trailers, or railroad cars.

The rail carriers are of the view that Seatrain is a lower quality service than TOFC, and also that TOFC is generally of higher quality than all-rail box-car service. The rail carriers are also of the view that the record does not show that Seatrain is of lower quality than all-rail box-car service.

Generally, all of the parties herein agree that TOFC is a higher quality service than all-rail box-car service. A number of shipper witnesses presented by Pan-Atlantic stated that they would not use sea-land service at rates equal to or higher than rail rates. Pan-Atlantic reasons that, although this testimony dealt primarily with a comparison of sea-land versus rail box-car services, necessarily the testimony would apply in a comparison of sea-land versus TOFC, inasmuch as TOFC is the higher quality service as between itself and all-rail box-car service.

On the other hand, a number of shipper witnesses presented by the rail carriers made statements to the effect that they would not use TOFC service unless the railroads offered piggy-back rates equal to sea-land rates. Some of these shippers would not use carload box-car service because their customers are not located on rail sidings, whereas sea-land service provided store-door delivery, and these shippers consider that the railroads must provide TOFC service to compete with the sea-land service. One

of these shipper witnesses presented by the rail carriers stated that transit time has never been an important factor to it. Other shippers are concerned with transit times and state that between certain points not in issue herein sea-land service has been faster than all-rail box-car service.

A slower transit time is listed by Pan-Atlantic as one of its service disadvantages in relation to the proposed TOFC service. On four voyages during November and December, 1957, the average transit by sea-land was 13.98 days from eastern origins to Dallas and Ft. Worth. A study made by the rail carriers for all-rail box-car service showed average transit times of 10 days from New England to the southwest and 9 days from Trunk Line Territory to the southwest. Witnesses for the rail carriers testified as to various transit times for rail box-car service depending on routes used. Generally, so far as this record shows, TOFC service has about the same or one day faster transit time than all-rail box-car service. For cost purposes, the rail carriers and Pan-Atlantic used TOFC costs for trailer rental based on average round-trip times, respectively, of 13.4 days and 14 days. It is concluded that the average TOFC transit time one-way from origin to destination is about 7 days, and that sea-land is generally a slower service than TOFC.

A second disadvantage of sea-land is the infrequency of its sailings. If a shipper should miss a sea-land sailing his cargo would be held up by as much as six days awaiting the next weekly sailing. A third disadvantage of sea-land is the relative uncertainty and undependability of the sea-land ocean-going service. This uncertainty stems from storms at sea, fog, marine accidents, mechanical breakdowns, strikes, and threats of strikes. A fourth disadvantage of sea-land is the unavailability of in-transit privileges, such as those on rice, cotton, and flour. A shipper of canned baby food does not use Pan-Atlantic or Seatrains from Rochester, N. Y., to the southwest because it uses storage in transit via railroad at St. Joseph, Mo., and for this

reason irrespective of the rate level this shipper could not use water service.

Seatrain lists the same general disadvantages of its service in relation to the proposed TOFC service, as were listed by Pan-Atlantic. Seatrain has two weekly sailings from Edgewater, N. J., to Texas City, Tex., and two weekly sailings in the reverse direction. Seatrain time in transit via water between these ports is 6 days one way, and to this time there must be added from 3 to 5 days for the movement from New England or Trunk Line Territory to Edgewater, and 2 days for the movement from Texas City to Dallas or Ft. Worth. It is concluded that Seatrain transit time is slower than the proposed TOFC. Seatrain also lists restrictions on the size of cars which its vessels are designed to handle, and the bunching of cars at destination when shipped via Seatrain to a multiple-car consignee as further disadvantages of its service. As seen, it has been conceded by the parties that Seatrain is a lower quality service than TOFC.

There is relatively little evidence of record concerning the value of the sea-land service compared with the Seatrains service. Generally, the rail carriers consider sea-land service to be superior to the Seatrains service. Pan-Atlantic contends that the railroad position is influenced by the fact that some of the railroads participate in the joint rail-water-rail operations of Seatrains, that the railroads hope to make sea-land rates noncompetitive with Seatrains thus forcing Pan-Atlantic out of the Atlantic-Gulf picture, that the railroads realize that many of the Seatrains rates are maximum rates prescribed for application by Seatrains in Docket No. 28300, and that such rates cannot be condemned for application by Seatrains in the same manner that the railroads are seeking to have them condemned for application via Pan-Atlantic. Pan-Atlantic in summary contends that to all important intents and purposes the sea-land and Seatrains services are the same, both entailing ocean transportation, uncertainty of service, infrequency of sailings, and longer transit times than by TOFC.

Seatrains take the position that there is nothing of record to justify sea-land rates lower than Seatrain rail-water-rail rates, and that sea-land truck-water-truck rates which are lower than Seatrain rates, either in the measure of the rate, or by virtue of lower minimum weights, or both, are unjust, unreasonable, and lower than competitively necessary, and therefore injurious to the rate structure and contrary to the national transportation policy. Seatrain asks that Pan-Atlantic be ordered to publish and maintain rates and minimum weights no lower than those maintained by and for the account of Seatrain in its rail-water-rail service.

Since sea-land provides door-to-door service it would appear to have some service advantage over Seatrain as in those cases where a shipper is not located on a rail siding. Nevertheless, many shippers would not use sea-land service unless the sea-land rates were no higher than the Seatrain rates. In fact one shipper at Syracuse, N. Y., whose plant was constructed for rail shipments, would prefer to ship via all-rail or via Seatrain, rather than via sea-land. At least one shipper would discontinue using Pan-Atlantic's service if the sea-land rates were caused to be increased to a level higher than the Seatrain rates. This shipper and the others supporting Pan-Atlantic make no mention of the minimum weights attached to their sea-land and Seatrain rates, and it is concluded that as between sea-land and Seatrain the record does not justify the prescription of equal minimum weights. Seemingly, the same minima would not be practicable since sea-land shipments use trailer bodies as containers whereas Seatrain shipments use railroad cars as containers.

**GENERAL DISCUSSION AND CONCLUSIONS.** Whereas in the related proceedings entitled, I. & S. Docket No. M-10415, et al., *Commodities—Pan-Atlantic Steamship Corporation*, only the sea-land rates were in issue, in the present proceedings TOFC, sea-land, and Seatrain rates are in issue.

Therefore it is now necessary to consider the necessity for differentials between these rates, and whether minimum rates should be prescribed.

Both Pan-Atlantic and Seatrain ask that the proposed TOFC rates be found unlawful, and that the Commission exercise its power to prescribe minimum rates. Pan-Atlantic asks that the present TOFC rates, as distinguished from the proposed TOFC rates, be found minimum reasonable rates. Seatrain urges that if any readjustment of the relationship between sea-land and TOFC rates be required, that there be prescribed such relationship through the medium of a minimum rate order that will preserve the existing revenues of Seatrain, protect its rate levels, and perpetuate the differentials that it considers necessary for its continued operation. The rail carriers oppose the prescription of any rate differentials between their rates and water carrier rates herein. The rail carriers state that the Commission's power to prescribe or approve differentials in favor of water carriers exists only where such carriers in competing with overland services are operating under service disabilities and are possessed of the inherent ability to transport freight at lower cost than their overland competitors.

It is the position of the water carriers herein that the proposed TOFC rates will precipitate a cycle of destructive competition contrary to the national transportation policy. Seatrain states that if the proposed TOFC rates are permitted to become effective that Seatrain will publish immediately rail-water-rail rates reflecting proper and reasonable differentials under the TOFC rates; that Pan-Atlantic then will publish and maintain rates that are both no higher than Seatrain's rates and that are made differentially under the TOFC rates; and that the net result will be a rate relationship comparable to that now existing but on a substantially depressed basis. Seatrain says that there is little likelihood that the rate cutting activity would stop even at that destructive level, and that if the rail carriers

then seek to meet the reduced Pan-Atlantic rates, a further vicious cycle of rate cutting will ensue.

Among the witnesses for the rail carriers there were differences of opinion. One rail witness stated that as to TOFC service he did not know whether equality of rates with sea-land would be necessary or whether a lesser differential would be the answer. It is clear that if sea-land rates were higher than TOFC rates, there would be no sea-land shipments. Even at equal rates many shippers would have no incentive to ship via sea-land in preference to TOFC. It has not been shown that any traffic has moved via Pan-Atlantic at rates as high as the competing rail box-car or TOFC rates.

While no rule can be stated which applies to all shippers because of their varied needs, diverse commodities shipped, locations, and plant facilities, it has been shown generally that servicewise sea-land is not the equal of TOFC because of the slower transit time, less frequent service, and relative uncertainty of the deep-water service of Pan-Atlantic. The latter service has been improved substantially in relation to its prior break-bulk service, but not enough apparently to offset the traditional reluctance of the public to ship via water at rates equal to those of the overland carriers. On this record, there appears amply justified a differential of the sea-land rates under the proposed TOFC rates.

Section 15(a)(3) of the act provides that in a proceeding involving competition between carriers of different modes of transportation, in determining whether a rate is lower than a reasonable minimum rate, the Commission shall consider the facts and circumstances attending the movement of the traffic by the carrier or carriers to which the rate is applicable. The section provides further that rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the national transportation policy.



It is the declared national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the Interstate Commerce Act, so administered as to recognize and preserve the inherent advantages of each, to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers, all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of the Interstate Commerce Act shall be administered and enforced with a view to carrying out the declared national transportation policy.

The specific reference in section 15(a)(3) to the national transportation policy clearly qualifies the preceding clause in that section. The national transportation policy is meant to develop, coordinate, and preserve an adequate national transportation system by water, highway, and rail, as well as by other means. The use of the word, "and", means that the system must be adequate by each of the several modes.

In the present proceedings, among other things, we are concerned with the rates of the two water carriers operating in the Atlantic-Gulf coastwise trade. Before World War II, there were a considerable number of such carriers. The continued development and preservation of the remaining two now are threatened. It appears necessary that a rate differential or relationship be prescribed in order to foster the development and preservation of these coastwise water carriers. At the same time it is our duty to foster the development of rail transportation, including one of its newer forms, TOFC. It should not be fettered with onerous rate restrictions so rigid as to prevent its proper development. A flexible rate differential which is operative only under a limited range of circumstances or



conditions appears to be a possible answer to the admonition in section 15(a)(3) that the rates of one mode of carriage be not held up to a particular level to protect the traffic of another mode of carriage, giving due consideration to the national transportation policy.

In the public interest, and particularly in the interests of carriers of the different modes of transportation, it is well established that it is unjust and unreasonable for a carrier to establish rates which fail to yield out-of-pocket costs, especially when such rates lead to destructive competition. Another recognized principle is that a carrier may, in the exercise of its own good judgment, go below its so-called fully distributed costs in establishing rates. Low rates not only benefit the shippers, but also can benefit the carriers, in that a relatively small excess of revenue over out-of-pocket costs on each of relatively many units of traffic may well result in more total revenue above out-of-pocket costs than will a relatively large excess of revenue over out-of-pocket costs on each of relatively few units of traffic.

It is proposed now for the proceedings herein that there is justified a further modification of the principles stated in the preceding paragraph. This proposal relates to sea-land and TOFC only, inasmuch as costs for specific movements of Seatrains are not of record. Herein there are two competing modes of transportation, sea-land and TOFC, there is a serious threat against the continued development and preservation of one of these modes (sea-land), one mode (sea-land), has recognized service disadvantages in the eyes of the shipping public other than the measure of the rates, and the other mode of transportation (TOFC), which has service advantages also has higher out-of-pocket and fully-distributed costs in connection with many shipments. Under these circumstances, it is proposed that there should be a relative limit of freedom of action for the higher cost mode of transportation. The higher cost mode in any event should be allowed to reduce its

rates down to its fully-distributed cost level, but in going below that level it should not go so low as to be competitively destructive.

It is proposed herein specifically, that where the proposed TOFC rates are below their fully-distributed cost level, that they should be at least 3 percent and at least 5 cents per 100 pounds higher than the corresponding sea-land level of rates, provided that on the individual movement, or in connection with specific rates, sea-land is the low-cost carrier on both the out-of-pocket and fully-distributed costs levels. This proposal is made in view of the recognized service disadvantages of sea-land herein and in view of the national transportation policy.

The above proposal should not prevent sea-land and TOFC from making reasonable reductions in their rates to the benefit of the shipping public, but when such reductions go beyond the stage of reasonableness and enter the state of unfair and destructive competition, the reductions should be checked. Admittedly, determinations of costs, particularly fully-distributed costs more so than out-of-pocket costs, are difficult, since these costs rest upon factors of judgment and theory as well as upon other factors which may be determined more precisely. However, no more feasible method of resolving the contentions of the parties in the light of section 15(a)(3) of the act has been presented in the opinion of the examiner. It is not believed that a minimum rate order without qualification related only to the present rates of the water carriers herein would be practicable, in view of the territorial extent of these proceedings, and the fact that the competing all-truck rates are not here in issue, among other factors. Among other reasons it seems clear that not all of the present rates herein are at or near a minimum reasonable level.

The Commission should find that the proposed reduced TOFC rate of 195 cents, minimum 24,000 pounds, on laundry sour from Baltimore, Md., to Dallas and Ft. Worth, Tex.,

is not shown to be compensatory and not shown to be just and reasonable. It should further find that the proposed reduced TOFC rates are unjust and unreasonable, and will result in unfair and destructive competition contrary to the national transportation policy in certain instances, wherein the following conditions all prevail: (1) on a given shipment or rate the TOFC costs are higher than sea-land costs on both out-of-pocket and fully-distributed levels, (2) the proposed TOFC rate is below the fully-distributed cost level, and (3) the proposed TOFC rate is less than 3 percent greater or less than 5 cents per 100 pounds higher than the corresponding sea-land rate. The Commission should further find that the proposed TOFC rates in instances other than those specified above in this paragraph are just and reasonable and otherwise lawful. Fourth-section relief should be denied and granted, respectively, in connection with the proposed TOFC rates found unlawful and lawful.

The Commission should further find that the sea-land rate of 216 cents, minimum 20,000 pounds, on paint, etc., from Baltimore, Md., to Dallas and Ft. Worth, Tex., is not compensatory and is unjust and unreasonable. And the Commission should further find that the other sea-land rates and the Seatrain rates under investigation are not shown to be unjust and unreasonable.

Appropriate orders should be entered and the proceedings discontinued.

## APPENDIX B

## RATIONALE OF COST FINDING SECTION

*Cost Evidence:*

Cost evidence relating to the trailer-on-flat-car service was introduced by the Southwestern rail carriers, Eastern rail carriers, and by the protestant, Pan-Atlantic Steamship Company. The Eastern rail carriers introduced a cost study for TOFC service based almost wholly on cost factors introduced by the Southwestern rail carriers. Since the cost evidence of the Southwestern rail carriers will be discussed in detail below, further comments on the Eastern rail carriers' cost evidence is considered unnecessary.

The Missouri Pacific Railroad Company introduced revenue and expense data intended to show that the proposed TOFC rates would produce compensative revenue when compared with the average revenue and operating expenses of carriers in the Central Western and Southwestern regions. The revenues and expenses were shown on a per-ton-mile and a per-car-mile basis for all traffic combined. In addition to not providing a separation of the expenses between terminal and line-haul and between out-of-pocket and fully distributed, these figures do not reflect the special characteristics of TOFC traffic, and therefore, are without probative value in measuring the compensatory nature of the proposed rates.

The Southwestern rail carriers originally presented cost data for the TOFC service with costs based on handling one trailer per flat car, two trailers per flat car, and with percentages of empty return of zero, 50 and 100 percent. Subsequently additional evidence was introduced which superseded the original presentation. This latter evidence was based on costs for the year 1956 from Statement No. 2-58 of the Bureau of Accounts, Cost Finding and Valuation, and adjusted by respondent to a level of May 1, 1958.

It compares out-of-pocket costs with the proposed rates for one trailer per car, for two trailers per car, and on a combined basis reflecting 75 percent two trailers per car and 25 percent one trailer per car. The empty return ratio used for the line-haul expense was 25 percent. The respondent considered the combined showing to be the most appropriate, although it conceded that such a performance was not presently attained. Based on respondent's cost presentation the proposed rates exceed out-of-pocket costs for all movements.

The protestant water carrier took many exceptions to respondent's cost presentation and restated the costs. A comparison of the proposed rates with the protestant's restated out-of-pocket costs showed most of the rates to be below out-of-pocket cost.

In order to more fully understand the cost elements involved herein a short description of the services rendered the TOFC traffic may be helpful. At point of origin the trailer is loaded at the shipper's dock and then moved to the ramp area of the originating railroad. The trailer is subsequently loaded onto the flat car and is tied down or made secure to the car. Upon completion of the loading the cars are switched from the ramp to the outbound train along with other types of cars. The train is then given a line-haul movement to the Western gateway where the TOFC cars are switched to the delivering railroad's ramp and the trailers are untied and removed therefrom. At the present time the TOFC cars are not interchanged between the railroads so that direct movement of the trailers is required for delivery to the connecting line. After delivery to the connecting carrier's ramp the trailers are again placed on flat cars and tied down and subsequently moved to final destinations, where the cars are again switched to a ramp, the trailers untied and removed, delivered to the consignee and unloaded, and returned to the railroad terminal. So far as these proceedings are concerned two types of cars are

involved: one is a flat car of single trailer capacity which is equipped with tie-down devices; and the other is a car especially designed to hold two trailers with special hold-down devices. The latter type of car is at present not owned by the railroads but is leased from a car company under mileage agreement and is referred to as a trailer-train car. The abbreviation of TTX will be used herein in referring to the two-trailer cars while the single-trailer cars will be referred to as R. R.-owned cars.

In view of the many points of controversy over the cost evidence in these proceedings each element of cost will be discussed individually below with the comments and evaluation by the Cost Finding Section immediately following each item.

*(1) Source and level of expense data:*

*Respondent:*

In its final cost presentation respondent based its rail costs on unit expenses shown in Statement No. 2-58 of the Bureau of Accounts, Cost Finding and Valuation, which showed costs for the year 1956 and also costs adjusted to a level of January 1, 1958. Respondent considered the costs as of January 1, 1958 to be overstated, and therefore used the 1956 costs adjusted to what it purported to be a May 1, 1958 level. This was accomplished as follows: The total operating expenses for the year 1957 were related to the total operating expenses for the year 1956 for the Eastern district and Western district separately. The percent of increase was found to be 1.57 percent for the Eastern district and .83 percent for the Western district. A cost-of-living adjustment of 4 cents per hour as of May 1, 1958 was applied to the total service hours for the year 1957, United States as a whole, and the resulting amount of increase was related to the total operating expenses for the year 1956 for the United States as a whole to produce an additional



adjustment of 1.14 percent. The latter amount was added to the previous percentage increases for the Eastern and Western districts to produce total adjusting percentages of 2.71 percent for the Eastern district and 1.97 percent for the Western district. These percentage adjustments were applied to the expenses for 1956 by respondent to produce costs as of May 1, 1958.

Respondent showed costs on an out-of-pocket level only. It contends that the amount of additional revenue which a commodity should produce above out-of-pocket cost should be contingent upon what the traffic can bear rather than on an arbitrary prorate based on averages of all traffic. Therefore, it did not show fully distributed expense.

*Protestant:*

In its restatement of the rail costs in respondent's Exhibit No. 3 protestant used the costs for the year 1955 shown in Statement No. 1-57, issued by the Bureau of Accounts, Cost Finding and Valuation, and underlying working papers thereto. These costs were adjusted for wage and price levels to January 1, 1958, based on data shown by rail carriers in Ex Parte No. 212.

Protestant showed its costs both on an out-of-pocket and fully distributed basis. The out-of-pocket costs include 80 percent of the operating expenses, rents and taxes, excluding Federal income taxes, plus a return of 4 percent after Federal income taxes, and 50 percent of the road property and 100 percent of the equipment. The fully distributed costs include, in addition to the out-of-pocket costs, the remaining 20 percent of the operating expenses, rents and taxes, the passenger train and less-carload operating deficits and return of 4 percent after Federal income taxes on the property as a whole. The revenue needs over and above the out-of-pocket costs are given a prorate ton and ton-mile distribution over all revenue traffic without distinction as to kind or class.



*Cost Finding Section's comments:*

The method used by respondent to adjust the 1956 expenses to a May 1, 1958 level completely ignores the amount of traffic moving in the respective years because only the total operating expenses and a cost-of-living adjustment are used to obtain the final adjusting factors. Respondent's method of adjustment is unacceptable.

The method of adjustment to a level of January 1, 1958 used by protestant assumes the same level of traffic for both periods but adjusts for the level of wages and prices. When the adjustment is made in this manner for only a one-year period there is small likelihood of error. However, when such adjustment is made for two years or more there is a possibility of overstatement since any increase in efficiency of operations is ignored.

In view of the fact that the sea-land costs reflect 1957 expenses and the TOFC pickup and delivery, tie-down cost and trailer rental expenses are based generally on the year 1957, the remaining TOFC expenses should also reflect a level for the year 1957. Accordingly the Cost Finding Section believes that the costs shown in its Statement No. 2-58, which are based on the year 1956 operations with adjustment to reflect wage and price levels as of January 1, 1958, are appropriate for use herein and these costs have been used in the restatement of respondent's and protestant's cost evidence. (A check of the costs shown in Cost Finding Section's Statement No. 5-58, which shows costs based on expenses for the year 1957, indicates very close agreement between those costs and the costs as of January 1, 1958 shown in Statement No. 2-58. The costs in Statement No. 5-58 would have been used in the Cost Finding Section's restatement except for the fact that this statement is not of record.) The out-of-pocket cost is the significant measure as to whether or not a rate is compensatory, but for comparative purposes we have also supplied the fully distributed costs in our restatement.

(2) *Switching at origin and destination:**Respondent:*

For the cost of switching at the TOFC ramps respondent used one-third of the territorial average switching time. The factor of one-third was based on data furnished by the Pennsylvania and the Baltimore and Ohio Railroads in the East, and the Texas and New Orleans, Texas and Pacific, St. Louis-Southwestern and Missouri Pacific Railroads in the Southwest. In computing the switching expense per car respondent included an allowance of 25 percent for switching empty cars.

*Protestant:*

Protestant contended that the data supplied to respondent by the various railroads were deficient in that they did not make allowance for switching of the empty car or for non-productive time of the yard locomotives. Protestant stated that the switching data used by respondent was, in some instances, based on estimates and it contends that a detailed study should have been made to determine the switching time of the TOFC traffic. The protestant restated the switching minutes to include an allowance for switching of empty cars equal to the number of loaded cars and for non-productive time. In the Eastern district protestant's restated figure amounted to 12.9 minutes per car which, when related to the territorial average of 30 minutes per car, produced a ratio of 43 percent. Protestant used 45 percent of the territorial average in its restatement. In the Western district protestant used a restated figure of 16.4 minutes per car which, when compared with the total average of 26 minutes per car, produced a ratio of 63 percent. Protestant used a ratio of 65 percent in its restatement.

*Cost Finding Section's comments:*

We believe that respondent should have made detailed switching studies to determine the switching minutes per

car for the TOFC traffic. In its restatement of respondent's switching minutes for the Eastern district, the protestant used only the minutes for the Pennsylvania Railroad at Kearny, New Jersey, Pittsburgh, and Philadelphia, and for the Baltimore and Ohio at Philadelphia. It ignored the time at St. Louis of 2.1 minutes per car submitted by the Pennsylvania Railroad in a letter to protestant under date of March 25, 1958, which is part of the working papers that parties agreed could be used. When this time is taken into account and adjusted for empty and non-productive time, the average switching minutes in the Eastern district is reduced from 12.9 minutes to 11.4 minutes. The Cost Finding Section does not agree with protestant's use of 100 percent allowance for empty switch which is normal for other than boxcar traffic. Once the loaded TOFC cars have been placed in the ramp there is no need to switch them away from the ramp until they are to be made up into a returning train except in those instances where the capacity of the ramp is limited to less than the total number of cars received. Except for reference to the four-car capacity of the Baltimore and Ohio TOFC ramp at Philadelphia, the record does not provide evidence as to this necessity and, in the absence thereof, the Cost Finding Section believes that an allowance for switching empty cars equal to the amount of empty movement that is present in the line-haul operation is appropriate. Therefore, we have adjusted protestant's switching minutes to reflect 25 percent empty switching in the Eastern district and 50 percent empty switching in the Western district. The use of these empty return ratios is discussed in a subsequent item. The adjusted switching minutes per car compute to 7.13 minutes in the East and 12.30 minutes in the West. When related to the territorial average minutes per car of 30.6 in the East and 26.7 in the West shown in Statement No. 2-58, the ratio of TOFC switching minutes to the territorial average becomes 23 percent for the East and 46 percent for the West.

### (3) *Freight-train car costs:*

#### *Respondent:*

Respondent used a ratio of 45 percent of the territorial average for the freight-train car costs of railroad-owned cars. This was based on an average detention at origin and destination combined of 1.7 days as compared to the territorial average of 3.75 days. Respondent made no distinction between railroad-owned cars and privately owned cars.

#### *Protestant:*

Protestant also used a ratio of 45 percent of the territorial average for railroad-owned cars. The protestant developed the rental expense per car-mile for the TTX cars separately and the freight-train car costs for these cars is reflected in the line-haul expense.

#### *Cost Finding Section's comments:*

In its restatement of the costs the Cost Finding Section has used 45 percent of the territorial average for the TOFC freight-train costs for railroad-owned cars and has used protestant's treatment for the TTX cars.

### (4) *Carload station clerical expense:*

#### *Respondent:*

Respondent included carload station clerical expense based on 50 percent of the territorial average for the East and for the West.

#### *Protestant:*

Protestant included this expense in total for each territory.

#### *Cost Finding Section's comments:*

In view of the fact that the TOFC traffic is interchanged between the Eastern district and Western district and would

# APPENDIX A

## RATES, COSTS, AND COST RATIOS

	Sea-Land						Trailer-on-Flat-Car												Ratios			
					Ratio, Rate to Costs										Ratio, Rate to Costs		SL to TOFC Costs					
			Costs		OP	FD											OP		FD			
	Mn	Rt	OP	FD			RR	TTX	RR	TTX	RR	TTX	RR	TTX	RR	PTX	RR	TTX				
Ammunition, From New Haven, Conn.	30	299	138	175	217	171	30	299	214	186	259	231	140	161	115	129	64	74	68	76		
Candy, etc., From Boston, Mass.	36	214	139	179	154	120	36	214	190	172	236	218	113	124	91	98	73	81	76	82		
Paints, etc., From Jersey City, N. J.	36	190	111	137	171	139	36	190	182	166	225	209	104	114	84	91	61	67	61	66		
Printed matter From Phila., Pa.	23	273	172	212	159	129	23	273	250	204	292	246	109	134	93	111	69	84	73	86		
Wire goods, aluminum, From York, Pa.	14	438	281	334	156	131	30	438	345	246	386	287	127	178	113	153	81	114	87	116		

(Rates and costs in cents per 100 pounds; SL is Sea-Land; TOFC is trailer-on-flat-car; TOFC rates are proposed; Rt is rate; Mn is minimum weight in 1,000 pounds; Ratios are in percents; OP is out-of-pocket; FD is fully distributed; RR signifies railroad-owned flat cars with a capacity of one trailer; TTX signifies leased flat cars with a capacity of two trailers; destination of shipments is Dallas-Ft. Worth.)

move on through billing respondent's treatment is proper and has been followed in the Cost Finding Section's restatement.

(5) *Loss and damage expense:*

*Respondent:*

Respondent included the territorial loss and damage clerical expense and the loss and damage claim payments based on the United States average for all other manufacturers and miscellaneous articles and for alcoholic beverages or liquor separately.

*Protestant:*

Protestant also included loss and damage clerical expense and loss and damage claim payments except that protestant included the loss and damage claim payments for each territory rather than once for the entire movement.

*Cost Finding Section's comments:*

In obtaining the loss and damage clerical expense from the carload unit cost sheets protestant used the expense per ton shown therein for an expense per hundredweight. Protestant's expenses of .599 cent for the Eastern district and 1.472 cents for the Western district should have been .030 cent and .074 cent, respectively. The loss and damage claim payments should have been included only once for the entire movement since these figures are based on United States averages without regard to length of haul. The loss and damage clerical expense and the loss and damage claim payments have been included correctly in our restatement.

(6) *Interchange expense:*

*Respondent:*

The costs from Statement No. 2-58 include interchange expense in the line-haul expense based on a cost per car-

mile. The statement provides for eliminating the interchange expense per car-mile and stating it on a per-interchange basis where such treatment is desired. Respondent has availed itself of this option and has included interchange expense based on 1.5 interchanges per loaded move in the East and .5 interchange in the West, subsequently increased for the empty movement. Over-the-street trailer interchange cost at the gateway point between Eastern and Western territories is included separately. Respondent contends that interchanges between certain carriers do not entail the switching and cost normally associated with interchange service and that they are merely paper transactions for division of revenue purposes. This would be true for interchanges between the Missouri Pacific and Texas and Pacific, the Atchison, Topeka and Santa Fe and the Gulf, Colorado and Santa Fe and the Kansas City Southern and Louisiana and Arkansas Railroads, and would also be true of certain interchanges in the East. Respondent stated that in the Western district it could not foresee any interchanges other than the so-called paper interchanges of TOFC traffic destined to Dallas or Fort Worth as between the Western district carriers, since the carriers named above provide direct routes between the gateways and Dallas and Fort Worth.

*Protestant:*

Protestant takes exception to respondent's reduction of the number of interchanges. It contends that even though complete switching service may not be required for those points referred to as paper interchanges there is still some cost associated with such service which should be included. In developing the line-haul cost the protestant has used both a shortest route and a longest route over actual rail lines and has included the expense for the actual number of interchanges required over each, including so-called paper interchanges.



*Cost Finding Section's comments:*

Respondent is correct in its contention that the cost for a paper interchange is considerably less than the cost for an interchange where normal switching is involved. However, the elimination of the entire cost for the paper interchanges is not considered proper, considering the fact that the interchange costs in Statement No. 2-58 are based on all types of interchanges as reported by the carriers. Thus, if the cost for paper interchanges were to be excluded the remaining interchange cost would have to be based on the expense per actual interchange which would be somewhat higher than the cost shown in Statement No. 2-58.

Protestant is wrong in including an interchange expense for the transfer of cars between the A. T. & S. F. and the G. C. & S. F. railroads. Because these two roads operate and report as a system the transfer of cars between them is not reported as an interchange. The expense for the transfer is reflected as intertrain or intratrain switching which protestant has included fully on a car-mile basis.

In its restatement the Cost Finding Section has included the average interchange costs expressed on a car-mile basis with the line-haul expenses. Since the interchange at the gateways between the East and West is performed by interchange of the trailer only and not of the rail car, a reduction equivalent to one-half the cost of a full interchange has been applied to the terminal costs in each territory. The effect of this treatment is to include roughly 0.6 interchange for a 900-mile haul in the West and from 1.8 to 2.6 interchanges for hauls of 900 to 1,200 miles, respectively, in the East.

(7) *Intertrain and intratrain switching:*

*Respondent:*

Respondent included intertrain and intratrain switching on a per car-mile basis but included only 50 percent of the total shown in Statement No. 2-58. The use of 50 per-

cent of the territorial average was not based on any special studies made by respondent but was based on respondent's belief that the trains in which the TOFC traffic moves are subject to less than average switching en route.

*Protestant:*

Protestant included the intertrain and intratrain switching expense on the territorial average basis without reduction.

*Cost Finding Section's comments:*

In view of the fact that respondent failed to introduce evidence showing that the TOFC traffic actually receives less than the average intertrain and intratrain switching the use of the territorial average expense for this service is considered to be proper and has been included in the Cost Finding Section's restatement.

(8) *Trailer rental expense:*

*Respondent:*

Respondent based its costs for trailer rental on an average charge of \$4.00 per day for a one-day period of 6.7 days (round-trip 13.4 days) plus an allowance for 25 percent empty return. This amounted to a total cost of \$33.50 per loaded trailer.

*Protestant:*

The protestant stated that the elapsed time used by respondent did not take into consideration the fact that trailers may be idle over the week-end, and that there might not be 100 percent utilization of the trailers; therefore, it based its costs on a 14-day round-trip or seven days' one-way plus an allowance for empty return. Based on a rental cost of \$4.00 per day this produced a cost of \$44.80.

*Cost Finding Section's comments:*

Testimony of record indicates that the running time between origin and destination would average 5 days, or 10 days for the round trip. An allowance of two days' time at the origin and at destination would appear to be reasonable. Therefore, in its restatement the Cost Finding Section has used an allowance for trailer rental cost based on a 14-day round trip adjusted for empty return instead of a 13.4-day round trip by respondent. The trailer rental cost thus computed amounts to \$38.50 per loaded trailer. The allowance for empty return for trailer rental amounting to 37.5 percent is the average of 25 percent empty return in the East and 50 percent in the West. These percentages are discussed subsequently.

(9) *Trailer interchange expense:*

*Respondent:*

Respondent based its costs for the over-the-street interchange of the trailer at the gateway between East and West on figures furnished by the Baltimore and Ohio and Pennsylvania Railroads, the average of which computed to \$5.25 per hour. Allowing one hour for the interchange and adjusting for 25 percent empty return, respondent computed a total of \$6.56 per loaded trailer for the interchange.

*Protestant:*

Protestant based its expense on figures furnished by the Pennsylvania Railroad, Missouri Pacific and Baltimore and Ohio and included allowance for 100 percent empty movement. A figure of \$24.90 was included for the Baltimore and Ohio, which combined with the amount of \$11.28 for the Pennsylvania Railroad and \$15.76 for the Missouri Pacific Railroad, produced an average of \$17.31 per loaded trailer.

*Cost Finding Section's comments:*

The figure of \$12.45, excluding allowance for empty, as used by protestant for trailer interchange for the Baltimore and Ohio, appears to be excessive when compared with respondent's figure of \$4.85. The record does not provide information as to this discrepancy, therefore, the Cost Finding Section has used respondent's figure of \$4.85 in its restatement. Protestant showed a figure of \$7.88 for the Missouri Pacific Railroad based on 1.5 hours at a cost of \$5.25 per hour. This latter figure has been included with respondent's figure to produce an average of \$6.12. When the latter amount is adjusted for an empty return amounting to 50 percent, a total cost of \$9.18 per trailer interchange is obtained. The latter figure is used in the Cost Finding Section's restatement.

*(10) Trailer tie-down and untie cost:**Respondent:*

Respondent used a basic cost for placing the trailers on the car and securing them and for releasing them and removing them from the cars of \$9.00 per trailer in the East and \$8.00 per trailer in the West. These figures were subsequently adjusted for 25 percent empty return giving total costs of \$11.25 per trailer in the East and \$10.00 per trailer in the West.

*Protestant:*

After adjusting the figures furnished to respondent by the various railroads for a clerical cost item protestant used figures of \$9.60 per trailer in the East and \$8.50 in the West for the trailer train cars, and \$24.84 in the East and \$8.50 in the Western district for railroad-owned cars.

*Cost Finding Section's comments:*

It was brought out in the record that the figures used by the protestant for tie-down costs in the Eastern district were based on figures furnished by the Baltimore and Ohio

which included not only the service at the ramp but the movement of the trailers between the ramp and shipper or consignee. In order to correct for this overstatement by protestant the Cost Finding Section has substituted the cost of \$9.60 as used by protestant for trailer train cars for the \$24.84 it showed for railroad-owned cars in the Eastern district. In the Western district the Cost Finding Section has used protestant's figure of \$8.50 for both railroad-owned and TTX cars. After adjustment for the respective empty return allowances the total cost per trailer becomes \$12.00 in the East and \$12.75 in the West.

(11) *Pickup and delivery expenses:*

*Respondent:*

The pickup and delivery costs include the movement of the empty trailer from the carrier's motor terminal to the shipper's dock, the loading of the trailer and the return of the loaded trailer to the ramp at the origin point, and the movement of the loaded trailer from the ramp at destination to the consignee's dock, unloading, and the return of the empty trailer to the ramp or to the carrier's motor terminal. Based on data furnished by the participating railroads respondent developed costs of \$9.00 per load in the East and \$6.90 per load in the West for the movement of trailers between the ramps and shipper's and consignee's docks. The loading and unloading expense used by respondent was 12.8 cents per hundredweight in the East and 11.3 cents per hundredweight in the West.

*Cost Finding Section's comments:*

The protestant used the respondent's figures in its cost presentation and the Cost Finding Section has done likewise in its restatement.

(12) *Weight of train for TOFC traffic:*

*Respondent:*

Respondent based its line-haul costs on those for through trains without adjustment for any reduction in

the weight of the train for expedited service. Respondent contends that the TOFC traffic is generally handled in regularly scheduled through trains and thus should reflect the cost of through train operations.

*Protestant:*

Protestant computed its line-haul cost of the TOFC traffic based on through train costs but with the weight of the train reduced by 25 percent. Protestant contends that the TOFC traffic moves in manifest trains and receives expedited service, and that such manifest trains normally operate with tonnage ratings which are from one-third to one-fourth less than other through trains because of the speed at which these trains are operated. It also cited movement by the Pennsylvania Railroad of the TOFC traffic from New York to Philadelphia with only 10 or 12 cars in a train. It also stated that the Baltimore and Ohio trains in which the TOFC traffic is handled have tonnage ratings that have 25 percent to 30 percent less traffic than other through trains. The effect of protestant's treatment is to increase the gross-ton-mile portion of the line-haul expense by roughly five percent in the Eastern district and by three percent in the Western district.

*Cost Finding Section's comments:*

Although it may be true that the TOFC traffic may receive expedited service in less than average weight trains in some instances protestant has not shown this to be true generally. With regard to the movement by the Pennsylvania Railroad of the TOFC traffic between New York and Philadelphia in small trains this movement comprises only a small part of the total movement from Eastern points to the Southwest and it cannot be assumed that because such movement occurs over a short distance the same would be true for the remainder of the haul. In addition, the effect of protestant's adjustment of the total line-haul expense is negligible. In the absence of special studies which would show the actual average weights of trains in which the

TOFC traffic is handled, the Cost Finding Section believes that the use of the through train average cost is proper and this has been used in its restatement.

(13) *Tare Weight of cars and trailers:*

*Respondent:*

Respondent made no adjustment in its costs for the difference in tare weights of the cars used for TOFC service from the tare weight of ordinary flat cars. Also, it made no adjustment for the difference in weight for flat cars of two-trailer capacity from those of one-trailer capacity. In addition, it failed to include the tare weight of trailers in computing its expenses. It also failed to distinguish between railroad-owned cars and cars rented on a mileage basis.

*Protestant:*

Protestant developed its costs for railroad-owned cars and for those cars rented on a mileage basis (TTX cars) separately. Based on figures furnished by several railroads concerned with the TOFC traffic it determined that the tare weight for railroad-owned cars was 55,200 pounds before addition of the tare weight of the trailer. After addition of the 11,500 pounds average tare weight of a trailer the total tare weight of the railroad-owned car becomes 66,700 pounds. For the TTX cars it determined the average weight to be approximately 78,000 pounds before addition of the trailer tare weight. Based on information furnished by the railroads protestant determined that in the Eastern district the TTX cars were loaded with an average of 1.7 trailers per car and in the Western district the TTX cars are operated with an average of 1.45 trailers per car. The total tare weight of the TTX cars and trailers computes to 97,550 pounds in the Eastern district and 94,675 pounds in the Western district.



*Cost Finding Section's comments:*

The respondent is in error in not recognizing the difference in tare weights between the type of cars and in not making allowance for the additional tare weight of the trailers. The use by protestant of the average number of trailers per car for the TTX cars is also considered to be proper because this reflects the average utilization of the cars. The Cost Finding Section has used protestant's tare weights in its restatement except for a reduction of 800 pounds in the tare weight of TTX cars based on information in the working papers. It has used average number of trailers in the East of 1.7 trailers per TTX car and 1.5 trailers per TTX car in the Western district in its restatement.

*(14) Net load per TTX car:**Respondent:*

Respondent assumed a net load for cars carrying two trailers of twice the minimum weight per shipment.

*Protestant:*

The protestant developed the net load for TTX cars by adding to the minimum weight per shipment an amount equal to .7 of an average weight per shipment taken as 30,000 pounds in the East and .45 of 30,000 pounds in the Western district. The figures of .7 and .45 are derived from the average number of loaded trailers handled on TTX cars as described in item 13 above.

*Cost Finding Section's comments:*

The use of twice the minimum weight by respondent is incorrect since it overlooks the fact that a trailer of one minimum weight may be handled with a trailer carrying an entirely different load on the same flat car and also ignores the fact that the average utilization of the TTX cars appears to be less than the maximum possible of two trailers per car. The Cost Finding Section has used protest-

ant's procedure except that it has rounded off the figure of .45 to .50.

(15) *Empty return ratio:*

*Respondent:*

Respondent developed its line-haul expenses using an allowance for empty return of 25 percent for the ratio of empty car-miles to loaded car-miles. This figure was based on judgment and reflects a long range viewpoint. It does not actually represent the empty return ratio experienced at the time the evidence was placed on record. Respondent feels that the figure of 25 percent is a reasonable figure to expect considering the increasing use of TOFC service.

*Protestant:*

Based on information furnished by the participating railroads protestant used ratios of empty to loaded TOFC car-miles of 60 percent for railroad-owned cars in both the East and West, and 23 percent in the East and 100 percent in the West for TTX cars.

*Cost Finding Section's comments:*

An examination of the working papers shows that in the Eastern district the Baltimore and Ohio showed no empty trailer movement on its own cars in either direction during the month of January 1958. During the same month the Pennsylvania Railroad showed an empty return of 23 percent for its TTX cars. Based on these showings the Cost Finding Section feels that use of a ratio of empty to loaded car-miles of 25 percent in the Eastern district for both railroad-owned and for TTX cars is not unreasonable, and it has used this ratio in its restatement. The working papers also show that in the Western district the Texas and New Orleans Railroad showed a ratio of empty to loaded car-miles of 49 percent for the months of October, November, and December of 1957, and January 1958 for

railroad-owned cars. Other carriers in the Western district showed a ratio of 100 percent empty return for both railroad-owned cars and TTX cars. The Cost Finding Section believes that the high empty return ratios experienced in the Western district will not remain static but will be reduced as the TOFC traffic develops. The TOFC service concerned herein is in reality a substitute for boxcar service. It is reasonable to assume, therefore, that the empty return ratio would approach that of boxcars. Statement No. 2-58 shows the ratio of empty to loaded car-miles for carload boxcar traffic to be 36 percent. The use of an empty return ratio of 50 percent for the Western district is, therefore, considered to be reasonable and this has been used in our restatement.

(16) *Line-haul miles:*

*Respondent:*

Respondent based its line-haul miles on the average short-line distance between the origin and the Chicago and E. St. Louis gateways, and between the gateways and destination increased by 13 percent to allow for circuitry.

*Protestant:*

Protestant computed costs for so-called shortest practicable routes and longest practicable routes.

*Cost Finding Section's comments:*

If these proceedings did not involve Fourth Section considerations, costs computed for respondent's mileages would suffice. Because Fourth Section considerations are involved, the costs based on routes longer than the average are important to measure the compensativeness of the proposed rates over the more circuitous routes. Therefore, the Cost Finding Section has used both respondent's average mileages and protestant's longest mileages in its restatement of the costs.

*Conclusion:*

Based on the relationship of present sea-land rates to the sea-land costs as restated for the commodities concerned herein, the present sea-land rates equal or exceed the restated out-of-pocket costs for all movements and exceed the fully distributed expense except for eight movements.

The proposed TOFC rates equal or exceed the restated out-of-pocket TOFC costs computed for hauls with average circuitry for all movements by TTX car and for all but six movements by railroad-owned cars. The proposed rates equal or exceed the fully distributed costs for 14 movements by railroad-owned cars and for 43 movements by TTX cars, out of the 66 rail movements. The restated sea-land costs, both out-of-pocket and fully distributed, is below the restated TOFC cost for all movements of comparable weight.

For hauls with the greatest amount of circuitry the proposed TOFC rates equal or exceed the out-of-pocket costs for 33 of the movements on railroad-owned cars and for 62 of the movements on TTX cars. Based on information in the working papers for these proceedings it appears that a greater number of trailers is carried on TTX cars than on railroad-owned cars.

# INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET NO. M-10415<sup>1</sup>

COMMODITIES—PAN-ATLANTIC STEAMSHIP CORPORATION

## *Decided*

“Sea-land” local and joint, single-factor through rates on numerous commodities, in trailerload, multiple trailerload and volume quantities, over single-line routes of Pan-Atlantic Steamship Corporation and over joint-line routes of motor common carriers and Pan-Atlan-

1. This report also embraces 23 other proceedings. Twenty-two of these were orally heard, namely, I. & S. No. M-10430, Adipic Acid—Boutte & Luling, La., to East, I. & S. No. M-10431, Commodities, Sea-land—Louisiana to East, Pan-Atlantic Steamship Corporation, I. & S. No. M-10434, Various Commodities—New Jersey, New York, and Pennsylvania to Florida and Texas, I. & S. No. M-10437, Pulpboard-Fibreboard—Evadale, Texas to New York, N. Y., I. & S. No. M-10469, Aluminum Articles—Massena, N. Y., to Texas, I. & S. No. M-10582, Various Commodities, Sea-land, East to Florida, Louisiana, and Texas, I. & S. No. M-10599, Paper—South to New York and New Jersey, I. & S. No. M-10602, Commodities—East to Alabama, Florida and Texas, I. & S. No. M-10624, Foodstuffs—Louisiana and Mississippi to Connecticut, Maryland, Massachusetts, New York, Pennsylvania and Rhode Island, I. & S. No. M-10679, Feed—Florida to New England and Trunk Line Territory, I. & S. No. 6847, Fresh or Frozen Foods—Sea-land-Pan-Atlantic Steamship Corporation, I. & S. No. 6848, Paper—Alabama to Florida and Florida to Texas, I. & S. No. M-10698, Sea-land-Pan-Atlantic Steamship Corporation, Plastics and Wire Cloth, I. & S. No. M-10716, Brushes, Connecticut, Massachusetts, and New York to Texas, I. & S. No. M-10721, Various Commodities—Pan-Atlantic Steamship Corporation, I. & S. No. M-10722, Sea-land Various Commodities, Pan-Atlantic Steamship Corporation, I. & S. No. M-10825, Commodities, Pan-Atlantic Sea-land Service, I. & S. No. M-10945, Commodities, Pan-Atlantic Steamship Corporation, I. & S. No. M-10946, Commodities, East, South, and Southwest, I. & S. No. M-10963, Various Commodities, Pan-Atlantic Sea-land Service, I. & S. No. 6870, Aluminum and Petroleum, Texas and Louisiana to Florida, and I. & S. No. 6894, Commodities, Pan-Atlantic, Florida, Louisiana, and Texas. The last 10 listed proceedings originally were part of a separate record entitled I. & S. No. M-10698 et al., but later by agreement these 10 proceedings were merged for handling in the same report with those entitled I. & S. No. M-10415 et al. The twenty-fourth proceeding herein is I. & S. Docket No. 6985, Frozen Citrus Products—Florida To Official & New England Points, which has not been heard. By order dated February 17, 1959, Division 2, acting as an appellate division, ordered that this proceeding be consolidated for disposition in a report with I. & S. No. 6847.

tic, from, to, and between numerous points in the east, on the one hand, and, on the other, points in the south and southwest, also, from, to, and between points in the south, on the one hand, and, on the other, points in the southwest, also from and to points in the south, found just and reasonable, and not to constitute an unfair or destructive competitive practice in contravention of the national transportation policy in at least approximately 458 instances; other such sea-land rates in 11 instances found not shown to be just and reasonable. Those rates found unlawful ordered canceled, and proceedings discontinued.

*William H. Ambrecht, L. A. Parish, and Warren Price, Jr.*, for respondents, Pan-Atlantic Steamship Corporation and motor-carrier participants in Pan-Atlantic tariffs.

*Charles W. Bucy and Leonard M. Shinn* for the Secretary of Agriculture of the United States, intervener in support of respondent, Pan-Atlantic.

*Edwin J. Miller and J. J. A. Winzenried* for other interveners in support of respondent, Pan-Atlantic.

*Joseph Hodgson, Jr., and S. S. Eisen* for Seatrain Lines, Inc., intervener as its interests may appear.

*Edwin N. Bell, James A. Bistline, J. P. Canny, Arthur J. Dixon, Earl E. Eisenhart, Jr., Robert T. Falet, Russel L. Frink, R. C. Gill, Ernest D. Grinnell, Jr., Carl Helmetag, Jr., Bernard Hulkower, Eugene E. Hunt, William Q. Keenen, Howard D. Koontz, V. H. Livingston, Donald McDevitt, J. Edgar McDonald, Prime F. Osborn, Leo H. Pou, Clarence Raymond, B. V. Reynolds, Charles P. Reynolds, Albert B. Russ, Jr., Walter G. Treanor, Donal L. Turkal, R. S. Trigg, and Harold B. Wahl* for protestant railroads.

*Guy H. Postell, Reuben G. Crimm, James E. Haydon, and J. G. Quisenberry* for protestant motor carriers.

## **Report Proposed by Charles E. Morgan, Hearing Examiner.**

By schedules filed to become effective on October 28, 1957, in I. & S. No. M-10415, and later in the other proceedings, the Pan-Atlantic Steamship Corporation (called Pan-Atlantic), and the motor common carrier participants in Pan-Atlantic tariffs proposed to establish at least approximately 469 new reduced commodity rates<sup>2</sup> for the transportation in "sea-land" service of numerous commodities,<sup>3</sup> in trailerload, multiple trailerload, and volume quantities, from, to, and between numerous points, in the east, south, and southwest. Upon protests of rail carriers in these areas, The Eastern Central Motor Carriers Association, Inc., and the Southern Motor Carriers Rate Conference, Inc., the operation of the schedules was suspended to and including May 28, 1958, in I. & S. No. M-10415, and later in the other proceedings, after which dates the schedules became effective.<sup>4</sup>

The Secretary of Agriculture of the United States, the Keystone Macaroni Manufacturing Co., Inc., and the Devoe & Reynolds Co., Inc., intervened in support of Pan-Atlantic.

2. Rates are stated in cents per 100 pounds.

3. Including brass, bronze or copper rods, candy and confectionery, silica gel, radio and television sets, lead, adipic acid, alcoholic liquors, synthetic plastics, rubber, building and paving materials, ammoniacal liquors, sodium acetate, ammonium chloride, potassium caustic, lard, mud treating compounds, petroleum, plastic materials, springs, clay tile, welding compound, pulpboard, fibreboard, aluminum articles, bags or bagging, calcium chloride, shortening acids, soda, sodium nitrate, paper, paper articles, electrical appliances, air-conditioners, glass bottles, paint, printing paper, wall paper, lube oil, canned or preserved food-stuffs, animal or poultry feed (citrus pomace), frozen foods, frozen fruit products (concentrates), fresh citrus fruit, frozen vegetables, frozen seafoods, paper bags, wrapping paper, paper boxes, aluminum wire cloth, bronze wire cloth, brushes, brush factory products, coal tar dyes, chemicals, christmas tree holders, cement paste, machinery, spices, spring assemblies, tile, iron or steel wire cloth, woodpulp, aluminum oxide catalyst, transformers, frit, pumps, paint pigments, wallboard, metallic sodium, coffee, iron and steel articles, braided paper, soap, shipping carriers, molasses, chocolate syrup, phosphorus pentasulfide, flour bleaching compound, graphite, softener, ammunition, building metal work, chewing gum, coppers, cordage, toilet preparations and drugs, floor covering, lamps, automobile tires, aluminum billets, and window glass.

4. In I. & S. No. 6985, originally by order of August 5, 1958, the schedules were suspended to and including March 8, 1959. By order of August 7, 1958, this proceeding was discontinued, but by order of November 11, 1958, it was reopened. By order of February 17, 1959, the order of August 5, 1958, was vacated insofar as it suspended the operation of the schedules in I. & S. No. 6985, but the investigation therein remains in force and effect.



The Secretary of Agriculture is particularly concerned, on behalf of the agricultural community, but believes that revenues from agricultural commodities alone would not sustain the maintenance of the new and desirable sea-land service, and therefore considers as a practical matter that the interest of the agricultural community extends to the establishment of rate levels which will be attractive to a wide range of nonagricultural traffic. The Seatrain Lines, Inc. (called Seatrain), intervened as its interests may appear. Seatrain at present operates in a rail-water service using freight cars as containers. It contemplates inauguration of a new service which it calls "seamobile", which will be similar to Pan-Atlantic's sea-land service. Seamobile would use new containers which could be transferred readily between Seatrain vessels, highway trailers, or railroad cars.

As a common carrier of general commodities and passengers, Pan-Atlantic is authorized to operate generally between the ports of Boston, Mass., New York, N. Y., Philadelphia, Pa., Baltimore, Md., Georgetown and Charleston, S. C., Jacksonville, Miami, Tampa, Port St. Joe, Panama City, and Pensacola, Fla., Mobile, Ala., New Orleans, La., and Galveston and Houston, Tex. The operating rights of Pan-Atlantic include the transportation of property loaded in motor-vehicle trucks or trailers on trailerships, *Pan-Atlantic S. S. Corp. Operating Rights*, 297 I. C. C. 773.

**THE SEA-LAND SERVICE.** Sea-land service sometimes also is called trailership (trailer-on-ship) or fishyback. In this service the lading is transported over both highway and water in the same containers. These are 35-foot boxes, or trailer bodies, of special design, which are detachable from the trailer chassis and wheels. These boxes are lifted on and off the Pan-Atlantic trailerships, and on and off the trailer chassis, without handling the lading inside the boxes. The trailerships are so constructed that each trailer box fits into a slot to prevent shifting at sea. From the

standpoint of the shipper, the sea-land service is essentially a motor-carrier operation since a highway trailer is loaded at the door of the consignor and the same trailer is unloaded at the door of the consignee, with the principal difference being that the container (trailer box) is moved a considerable distance on an ocean-going ship. In many respects sea-land is similar to trailer-on-flat-car (piggy-back) service. As seen, in sea-land service only the trailer body and not the trailer chassis and wheels are transported over the water.

In sea-land service, when the consignor wants the container (trailer box) sealed, it is sealed. Generally, this assures that lading will not again be handled until it finally arrives at the consignee's place of business and is unloaded under his supervision. Trailers are not sealed when it is intended to put in additional lading at some other point. Less-than-truckload freight ordinarily would not be sealed.

Sea-land is a new service compared with Pan-Atlantic's prior break-bulk water service, in that in sea-land there is no interchange of the lading. Sea-land is not new compared with the prior break-bulk service, in that both provide or provided joint routes with motor common carriers and door-to-door service from consignor to consignee. In the prior break-bulk service longshoremen handled the lading into and out of the ships, whereas in sea-land the boxes containing the lading are lifted on and off of the ships by the use of two gantry type cranes on the vessels. Each crane is capable of unloading one trailer and placing another on board ship in about five minutes. These patented cranes are parts of the ships, and eliminate the need for costly shore installations. The cranes make it possible to serve any port having adequate water and dock-side aprons large enough to permit bringing truck chassis alongside the ship.

The stevedoring expense of the old break-bulk service of Pan-Atlantic was about three to four times greater than the vessel operating costs, whereas in sea-land service ste-

vedoring expense is very small compared with the vessel cost. Compared with the slower and more expensive break-bulk service, sea-land has reduced considerably Pan-Atlantic's cargo handling time, its in-port vessel time, and its loss, damage and pilferage expenses.

A trailership generally can be loaded in about one day and unloaded in about one day. Basic loading procedures call for the placing of an outbound box on the ship, and replacing an inbound box on the same trailer chassis which was used to bring the outbound box on to the pier. Thus, the rate of loading equals the rate of unloading.

The trailer boxes used by Pan-Atlantic in sea-land service have a capacity of about 2,088 cubic feet for dry-cargo and open-top equipment, and of about 1,520 cubic feet for refrigerated equipment. Whether the boxes are loaded or empty, a full complement of 226 boxes is carried always on each voyage, because it is necessary to keep a balance of boxes at the several ports, and because of the necessity of maintaining the stability of the trailerships.

To achieve the proper balance of the cargo, fore and aft, port and starboard, and top and bottom, it is necessary that there be a systematized sequence of loading of the trailer boxes. For this purpose, many of the boxes to be loaded are assembled at a parking lot near the port at least 60 hours in advance of arrival of the ship, and the bulk of the cargo must be delivered to shipside parking lots prior to 12 hours before the arrival of the ship. The proper sequence affects the trim of the vessel, the list of the vessel during and upon completion of loading, and the degree of roll and stability. In addition, certain types of containers must be stowed in a limited number of positions only, dependent upon weight, container construction, cargo carried, and destination. No container destined for the next immediate port should be stowed underneath containers destined for later ports in a sailing schedule. One truck breakdown en route to the parking lot from a pickup point could destroy the entire planned loading sequence for any

one hatch. Generally, for various reasons, Pan-Atlantic cannot accept sea-land freight and load it on a ship on the same day.

Both single-line and joint-line sea-land services are provided by Pan-Atlantic. It operates single-line between ports and port terminal areas which it is authorized to serve, by use of its trailerships on the water and leased tractors and trailers on the land. For example, frozen foods may move single-line via water from the port of New York to the port of New Orleans. (Both pickup and delivery would be in Pan-Atlantic motor equipment.) This motor equipment is operated under the Pan-Atlantic name and operating rights. The automotive equipment is leased from an affiliated corporation, not owned but under common control. In some instances Pan-Atlantic has operated single-line 60 miles beyond a port. The extent of its single-line operations are the subject of complaints in dockets Nos. MC-C-2163 and 2167.

The joint-line sea-land service of Pan-Atlantic covers the ports and port terminal areas and extends well beyond. For example, electrical appliances may move joint-line, motor-water-motor, from Somersworth, N. H., via ports of New York, N. Y. (Port Newark, N. J.), and Houston, Tex., to Dallas, Tex. Where the route is listed in part as "motor", this means line-haul service under the operating rights of motor common-carriers, and not line-haul service under the operating rights of Pan-Atlantic. Pan-Atlantic tractors are used in moving the trailers between parking lots adjacent to the dock and the docks. Phosphorous pentasulfide may move, motor-water, from Buffalo, N. Y., via the ports of Port Newark and New Orleans, La., to Oak Point, La. (Delivery would be in Pan-Atlantic motor equipment.) Coffee may move, water-motor, from New York City via the ports of Port Newark and Houston, to Tulsa, Okla. (Pickup would be in Pan-Atlantic motor equipment.)

Presently, Pan-Atlantic is a wholly-owned subsidiary of McLean Industries, Inc., called McLean. The total invest-

ment in the new type sea-land operations made by McLean or its subsidiaries or affiliates has been about 40 to 45 million dollars, including about 50 percent for conversion of break-bulk type vessels to sea-land vessels, over 20 million dollars for automotive equipment, and about 0.5 million dollars for procurement of terminal facilities, including docks, piers, staging areas, and warehouses.

The pool of highway equipment which is or will be available to Pan-Atlantic consists of about 3,000 dry-cargo (closed-van) trailer boxes, about 500 mechanically-refrigerated boxes, about 300 open-top boxes, about 1,700 trailer chassis, and about 300 tractors, pickup and delivery, and miscellaneous vehicles. While there will be a total of 3,000 dry-cargo boxes, about one-third of these will be used in a trailer-on-ship service to Puerto Rico. The dry-cargo box, used by Pan-Atlantic in sea-land service plus trailer, chassis, weighs about 10,000 to 10,200 pounds, and has a capacity of payload freight of about 40,000 pounds.

The sea-land tariffs do not provide extra charges for the use of refrigerated equipment, and the rates on commodities requiring such equipment are intended to have been adjusted for this expense. The mechanically-refrigerated boxes have dual type motors. An electrical motor is used for the refrigerating machinery while a box is aboard ship, and a motor using butane or other fuel when the box is on land. A refrigerated box plus trailer chassis weighs a total of about 13,000 to 14,000 pounds, and has six inches of insulation. The greater weight of the refrigerated equipment, together with State maximum weight laws, result in lesser maximum permissible loads of payload freight in the refrigerated equipment than in dry-cargo boxes. For this reason, in computing adjusted costs, hereinafter, 35,000 pounds has been used on frozen and fresh commodities moving in refrigerated equipment in sea-land service via Port Newark over New Jersey highways, as the maximum load per trailer, in lieu of the tariff minima of 36,000 pounds, 40,000 pounds, and 80,000 pounds (2 trailers).

The New Jersey highway weight limitation is 60,000 pounds, and the maximum weight of payload freight depends upon the equipment utilized. In I. & S. No. 6985, Pan-Atlantic published rates with minima of 35,000 and 70,000 pounds on frozen or chilled fruit products from Florida origins moving via Port Newark over New Jersey highways to eastern destinations. The minimum weights in I. & S. No. 6985 were coupled with the same rates as already were under investigation in I. & S. No. 6847, wherein the former minima were 36,000 and 80,000 pounds. The suspension of the rates in I. & S. No. 6985 was vacated in consideration in part of the agreement of Pan-Atlantic to abide by the order resulting from the investigation in I. & S. No. 6847 with respect to the rates in I. & S. No. 6985. Any further discussion, conclusions, or findings herein, which relate to the same rates from and to the same points on the same commodities in both dockets Nos. I. & S. 6847 and 6985, but which relate to the different minima in those dockets, will be considered as relating to the lower minima of 35,000 pounds and 70,000 pounds (2 trailers). These lower minima by reason of the State weight laws will result in more economic operations by Pan-Atlantic in the utilization of refrigerated trailers.

**HISTORY OF PAN-ATLANTIC OPERATIONS.** Since 1933, Pan-Atlantic has operated as a conventional break-bulk carrier, except that during World War II years, its vessels, along with those of other domestic water carriers, were taken over by the United States Government for war purposes. In April 1956, Pan-Atlantic started using two tanker-trailerships, which had been converted from T-2 tankers, in its Atlantic-Gulf-coastwise service. Four tanker-trailerships ultimately were placed in this service, but have been removed. These tanker-trailerships transported 60 containers on deck, besides bulk oil in the tanks. In its prior break-bulk service, Pan-Atlantic utilized C-2 freighters, each with a gross capacity for lading of 10,500 tons.



In May, 1957, Pan-Atlantic suspended its Atlantic-Gulf coastwise break-bulk service to provide ships for conversion into trailerships. For its sea-land service in the Atlantic-Gulf coastwise trade, Pan-Atlantic converted four ships into lift-on-lift-off type trailerships, each with a capacity of 4,000 tons of payload freight, and each holding 226 boxes or containers, of which 166 are stowed below deck and 60 on deck. The ships are 468 feet long, and are capable of a speed of about 15.5 knots, substantially the same as when the ships were used in the prior break-bulk service.

In October, 1957, Pan-Atlantic began trailership service which included the ports of New York, Miami, Houston, and Tampa. Later, the port of New Orleans was added, and for a time the port of Philadelphia (Wilmington, Del.) was served. In April and May, 1958, the Pan-Atlantic trailership scheduled service included a round trip between the ports of New York and Houston direct, and a round trip between the ports of New York and New Orleans, serving the port of Miami on the southbound journey, and the port of Tampa on the northbound journey. Ultimately, when more ships are available, the port of Mobile may be added.

Besides its sea-land service as described above, presently Pan-Atlantic provides a break-bulk service in the Intercoastal trade between ports on the Pacific and Atlantic. Pan-Atlantic or an affiliate has provided or will provide another trailership service between North Atlantic ports and Puerto Rico. In this service a shipment might move via motor carrier from Chicago, Ill., to Port Newark, thence via trailership to Puerto Rico. In this service to Puerto Rico, two additional trailerships are or will be used. This makes a total of six trailerships under the control of McLean. In the event that the two additional trailerships are not used in service to Puerto Rico, they also would be suitable for use in the Atlantic-Gulf coastwise service.

**WATER CARRIERS AND THE NATIONAL DEFENSE.** Trailership service to and from ports on the Great Lakes via the



St. Lawrence Seaway is possible physically, and is under consideration by Pan-Atlantic. In the future there also is the possibility of sea-land service to and from Alaska and Hawaii, since trailerships can sail all the seas, oceans, and rivers where the water is deep enough. At one time, Pan-Atlantic advertised that it would place ten trailerships in operation, and should this be done, more tonnage could be handled and sailings could be more frequent. From the standpoint of competition between the several modes of transportation, the rate pattern which may result from these proceedings, also may have considerable bearing in connection with the possible-resumption of services by other coastwise water carriers which have not resumed operations since World War II.

Prior to World War II there were about 19 deep-water common carriers operating in the Atlantic-Gulf coastwise trades, employing about 139 vessels. In 1940, these water carriers transported over 8,500,000 tons of cargo. Today, there are only two of these carriers operating in this trade, namely Seatrain and Pan-Atlantic, which operate, respectively, six and four vessels. A comparison introduced by Pan-Atlantic shows that between 1939 and 1956, the tonnage handled by class I railroads in the United States increased 160.5 percent, and the tonnage handled by class I motor carriers increased by 545.6 percent, but excluding bulk oil carried by Seatrain and Pan-Atlantic, the tonnage handled by water carriers in the Atlantic-Gulf coastwise trade suffered a decrease of 79 percent.

During the post-World War II period, generally there has been a substantial expansion of commerce in the United States, particularly in the south and southwest, but an exception to the general growth of transportation has been the Atlantic-Gulf coastwise dry-cargo tonnage of the water service. Pan-Atlantic estimates that Seatrain operating as at present with full capacity would transport about 1,000,000 net tons per year, and that Pan-Atlantic would transport about 800,000 net tons per year (100 round-trip

voyages with full loads of 4,000 tons in each direction). The total for the two water carriers would be 1,800,000 net tons, compared with over 8,500,000 net tons transported by the water carriers in the same trade prewar.

Excluding bulk petroleum carried in tankers, as recently as 1950, Pan-Atlantic carried in excess of 1,000,000 tons in its coastwise break-bulk service. In 1956 and 1957, respectively, Pan-Atlantic carried in coastwise service only 433,915 tons, and 332,057 tons. Newtex Steamship Company (called Newtex), another line which resumed operations in the coastwise trade in the post-World War II period, ceased operating in 1956.

Upon the resumption of its prior break-bulk service following World War II, Pan-Atlantic and other domestic coastwise water carriers were handicapped seriously by substantial increases in operating costs, particularly costs in loading and unloading cargo from the ships.

The United States Maritime Administration stated in a 1955 review in part:

In short the crux of the coastwise-intercoastal shipping problem is in the break-bulk dry-cargo trade today as it was before the war. The re-establishment and preservation of this segment of the domestic fleet is of vital national defense importance if the immediate needs of a future grave national emergency are to be met. It is obvious that the ready availability of ships employed in domestic operations may well be a critical factor in any initial military or civil defense operation of the United States occasioned by a future atomic or thermo-nuclear war.

Further, an economically sound, low-cost domestic fleet will continue to make important contributions to the economic growth and development of the United States as a whole and a balanced national transportation system in particular.

Traffic figures indicate that the decline in dry-cargo tonnage has occurred primarily, if not wholly, in the

break-bulk dry-cargo trades where rising costs, particularly in loading and discharging the ship, have largely eliminated the so-called inherent economic advantages of ocean transport.

The basic, long range solution of the break-bulk dry-cargo problem appears to lie in the adoption of technological improvements which will reduce cargo handling and other related costs and result in less in-port time and better vessel utilization.

The above statements show the importance of American ships to the national defense, and the need for reducing rising costs. In Pan-Atlantic's opinion, these proceedings involve far more than the usual competitive struggle between carriers for traffic, and rather there is ultimately involved the survival of an important segment of our domestic Merchant Marine. Concerning the matter of reducing costs, it has been the experience of Pan-Atlantic that its expenses in the present sea-land trailership operation are from \$10 to \$12 per cargo ton less than those incurred in the previous break-bulk type operation. This reduction in expenses is mainly the result of reduction in cargo handling time and in-port vessel time.

**THE SEA-LAND RATES.** The sea-land rates under investigation herein are from, to, or between points in 15 States, namely, Massachusetts, New Hampshire, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, and Maryland in the east, Florida, Alabama, and Mississippi in the south, and Louisiana, Texas, and Oklahoma in the southwest. The respondent, Pan-Atlantic, listed approximately 489 rates as among those under investigation, of which some 20 rates have been canceled under special permission. Some of the rates listed are said by Pan-Atlantic to be representative of more rates where the rates shown were believed sufficient to show the principal of rate-making employed by Pan-Atlantic. No at-

tempt has been made herein to enumerate all of the rates under investigation.

In addition to the rates under investigation, sea-land rates also are published from, to, or between points in the States of Maine, Vermont, Virginia, West Virginia, Ohio, Tennessee, South Carolina, and Arkansas, also points in Canada, and the District of Columbia. About 250 motor carriers participate in Pan-Atlantic's tariffs. Since Pan-Atlantic has recourse to numerous connecting motor carriers whose operational spheres reach throughout the United States, the rail carrier protestants consider Pan-Atlantic's sea-land service to be an actual and potential threat to much of their long-haul and heavy-loading, high rated tonnage. There are other pending proceedings in which Pan-Atlantic rates are under investigation, and the parties therein have stipulated that the record herein be considered therein.

The avowed motivation of Pan-Atlantic in publishing these sea-land commodity rates is its necessity to secure traffic in competition with other carriers, whether rail, motor, or water, and particularly in competition with the overland carriers. Since the record does not show specifically that any traffic has moved via Pan-Atlantic at rates as high as the competing rail rates Pan-Atlantic insists that its rates must be differentially lower than rail rates. It also seeks differentials under motor carrier rates. The motor-carrier competition faced by Pan-Atlantic is from common and private carriers, and from motor carriers hauling so-called exempt commodities. Where the competition is considered by Pan-Atlantic to be the rates of Seatrain, Pan-Atlantic proposes equalization of the rates with those of Seatrain. In connection with a few of the proposed sea-land rates, those on toilet preparations and drugs in I. & S. No. M-10963, Pan-Atlantic rates were published for the avowed purpose of equalizing the barge rates published by C. G. Willis, Inc.

Pan-Atlantic sea-land rates include marine insurance of the lading without extra charge. To the extent that

Seatrain does not provide such free marine insurance, Pan-Atlantic's charges would be lower than Seatrain's charges at equal rates. When Pan-Atlantic operated its prior break-bulk service, it also provided marine insurance between many points, but generally not between points in official territory and the southwest. In sea-land service when the lading is on the highways, the motor carrier provides insurance.

Traditionally water rates, including water-rail and water-motor rates, have been maintained at levels differentially lower than all-rail rates, principally because of the inherent disadvantages in the water services of uncertainty (perils of the sea), slower transit time, and infrequency of sailings. The last major consideration of the rates of the Atlantic-Gulf coastwise water carriers was in the *Class Rate Investigation, 1939*, Docket No. 28300, 286 I. C. C. 5 (1952). Therein the Commission prescribed maximum reasonable first-class rates on ocean-rail traffic, also maximum reasonable percentage relations of the lower classes to first class, between North Atlantic ports and interior points in eastern seaboard territory, on the one hand, and, on the other, New Orleans and Baton Rouge, La., Texas Gulf port, and interior points in the southwest. These prescribed maximum class rates were designed to preserve the then existing differentials of the ocean-rail rates under the all-rail rates. The maximum water rates prescribed therein were applicable exclusively to the Seatrain nonbreak-bulk service, and to the ocean-rail break-bulk water services of Pan-Atlantic and Newtex, since these were the only Atlantic-Gulf coastwise water carriers then (1952) in operation.

Pan-Atlantic had in effect for a number of years arrangements for through and continuous carriage with the railroads, and joint rates with overland carriers, both rail and motor. Joint water-motor rates were published by Pan-Atlantic to become effective as early as 1936. Pan-Atlantic also has published so-called "through nonconcurring" rail-water class rates.

The prescribed rates in Docket No. 28300 were class rates only, whereas in the present proceedings only commodity rates are in issue. Prior to the inauguration of its sea-land service, Pan-Atlantic maintained between points in Eastern and Southwestern territories a substantial number of joint truck-water commodity rates generally on the same level as the ocean-rail class rates prescribed in the *Class Rate Investigation, supra*. Pan-Atlantic's class rate structure between Eastern and Southwestern territories also was on the same general level as prescribed for ocean-rail class rates.

Pan-Atlantic made a complete evaluation of the rate structures of the existing water carriers and of the overland carriers, and concluded that the existing water rate structures were inadequate. Pan-Atlantic concluded that its sea-land service needed rate differentials under all-rail rates, but that lesser differentials would suffice than those differentials that had been maintained under its previous break-bulk service.

For its trailership service, Pan-Atlantic first put into effect class rates, and later commodity rates. Generally, the class rates were protested, but were not suspended and went into effect. Many of the commodity rates were suspended and are under investigation in these and other proceedings. The class rate structure put in by Pan-Atlantic and considered by it to be fair and proper, varies depending upon origins and destinations, the direction of the competing rail rate-making routes, constructive water mileages, and maximum prescribed ocean-rail rates, among other factors.

Generally, exclusive of exceptions due to the above factors, Pan-Atlantic constructed its trailership class rates on the basis of 92.5 percent of the overland carrier rates on terminal (port) to terminal (port) traffic, and on the basis of 95 percent of the overland rates on traffic moving, from, to, or between interior points located beyond the terminals (ports).



The commodity rates for its trailership service were constructed by Pan-Atlantic generally, but with many exceptions, so that they are related percentagewise to the all-rail commodity rates in the same measure as the sea-land class rates are related to the all-rail class rates. For example, between New York, N. Y., and Miami, Fla., the sea-land class rate structure is based on 92.5 percent of the all-rail class rates, and if a commodity rate were established between these two points, the sea-land commodity rate would be 92.5 percent of the all-rail commodity rate. As there were exceptions to the 92.5-95 percent formula in the class rate structure, there are also numerous exceptions to the 92.5-95 percent formula for commodity rates. Additionally, there are many individual adjustments in the commodity rates to accommodate individual shippers. Also individual adjustments are made in the commodity rates because the competition varies between all-rail carriers, all-motor common carriers, Seatrain, a barge line, and exempt motor carriers. Also there are instances where the sea-land rates were designed to preserve competitive relationships between shippers located at different origins. The result is a wide fluctuation in the amounts of the differentials established by the sea-land rates in relation to the all-rail commodity rates.

For example, the sea-land rate on paper boxes, from Miami, Fla., to Houston, Tex., is 96 cents, minimum 36,000 pounds, compared with the all-rail rate of 143 cents, same minimum. In this case, the competition faced by Pan-Atlantic was the result of a leased truck arrangement costing 101 cents, minimum 32,000 pounds. The proposed sea-land rate is 5 cents or about 5 percent under the leased truck rate. It is Pan-Atlantic's view that the all-rail rates fail to bear a consistent relation to cost, and therefore that sea-land differentials under all-rail rates cannot follow a consistent pattern on the basis of costs. Rather, Pan-Atlantic contends that the value of service consideration must be of primary economic importance in fixing of intercarrier rate differentials.



The protestant rail carriers point out that Pan-Atlantic has not attempted to justify the differential between a particular sea-land commodity rate and the rate of any other common or contract carrier by relating it to the added costs of the shipper using the sea-land service, but that Pan-Atlantic has gone upon the assumption that a differential is required primarily because a part of the sea-land service is operated over the water. For example, the entire justification, exclusive of Pan-Atlantic cost and other general evidence relating to the sea-land service, of the sea-land rate<sup>5</sup> of 140 cents, minimum 26,000 pounds, on petroleum from Bayway, Elizabeth, and Nutley, N. J., to Goodhope, La., is that, "All-rail service is the competition in every instance." "The rates proposed for sea-land service are, in every case, 7 cents per 100 pounds under the all-rail rates." "This figure represents a basis only 5 percent less than the all-rail rates."

Nothing is said of the petroleum shippers' relative advantages or disadvantages in using the two competitive forms of transportation. From this example, it appears that the principal basis of constructing the sea-land rates was to establish differentials under the overland competitive rates; and that this was done without regard to individual items of cost that might or might not be incurred by the shippers using either sea-land or competitive services. Of course, Pan-Atlantic considered its own costs, and generally did not establish, in its opinion, rates that would not be compensatory to it, that is, in most cases cover fully distributed costs, and in all cases, cover out-of-pocket costs. One rate, from New Orleans, La., to Rochester, N. Y., on foodstuffs (canned goods) of 106 cents, minimum 36,000 pounds, admittedly according to Pan-Atlantic, does not cover out-of-pocket costs, and Pan-Atlantic intends to cancel that particular rate.

There are so many rates in issue, that it is impossible to say that any one rate or any group of rates is representa-

5. Where comparisons are made with all-rail rates, the rates include Ex Parte No. 206-A general increases where applicable.

tive or typical of the other rates. Generally, the sea-land rates are lower than the all-rail rates. In a few instances, for example where there are more than one rate and more than one minimum on a commodity, the all-rail rates are lower than the proposed sea-land rates at the higher minima. Some of the sea-land rates are listed in Appendix "A" hereto. Also shown in this appendix are sea-land costs, and corresponding all-rail rates and costs. The sea-land costs are broken down between the Pan-Atlantic portion of the costs and the motor carrier portion of the costs. Also shown are the ratios of the sea-land rates to the sea-land costs, and the ratios of sea-land costs to all-rail costs. The costs shown in this appendix are those obtained from a restatement of the sea-land costs developed by our Cost Section.

**Costs.** The respondent, Pan-Atlantic, and the protestant rail carriers, submitted extensive cost evidence. Protestant southern motor carriers also submitted cost evidence concerning the transportation of frozen concentrates. These cost studies have been considered by our Cost Section as requested by the parties. The Cost Section has restated the sea-land costs. Necessarily the restatement is too voluminous to be reproduced in its entirety in this report, but it will be available for examination by the parties, and it is reproduced in part in Appendix "A" hereto. The detailed rationale of the restatement is contained in Appendix "B" hereto. Generally, the Cost Section has concluded that the proposed sea-land rates exceed the costs for most movements, also that a comparison of the sea-land costs with all-rail costs, shows that the sea-land costs exceed for most movements where rail costs are shown of record the all-rail costs, and that this latter relationship is more pronounced at high minimum weights.

From the examiner's analysis of the Cost Section's study, it is noted that of the 489 rates listed, including 20 rates canceled under special permission, 13 failed to yield out-of-pocket costs, and 145, or about 30 percent failed to

yield fully-distributed costs. For our approval it is not necessary that any one rate yield fully-distributed costs, but a carrier's rates as a whole should cover these costs. Some of the sea-land commodity rates more than double out-of-pocket costs and nearly double fully-distributed costs. Other sea-land rates exceed costs by narrower margins. The record does not show the volume of traffic which will move or is moving on the sea-land commodity rates herein. Also, Pan-Atlantic has other commodity rates and class-rates. Therefore only the future can tell whether these sea-land rates as a whole will be fully compensatory. Since the Pan-Atlantic sea-land trailership service is relatively new and somewhat, if not largely, still in its developmental stage, perhaps even a few rates which do not yield out-of-pocket costs should not be disapproved on that ground alone, considering that those low-yield rates may be considered developmental rates, or they may be in the nature of, or akin to, so-called back-haul rates. Under one theory of back-haul rates, any revenue is better than none if the container in question must be moved empty, whereas under the more prevalent theory each rate should stand on its own feet and at least cover out-of-pocket costs.

Pan-Atlantic is proposing a rate on shipping carriers, (empty barrels and bottles), from Daytona Beach, Fla., to Philadelphia, Pa., of 77 cents, minimum 16,000 pounds, on which the out-of-pocket cost as shown in the restatement is 147.8 cents, making a ratio of rate to cost of 52 percent. The out-of-pocket costs as shown by Pan-Atlantic is 72.3 cents with a ratio of rate to cost of 107 percent.

In the restatement of costs, there are 13 listed rates which yield less than out-of-pocket costs. Two of these were canceled under special permission. They are the rates from Houma, La., to Syracuse, N. Y., and from St. Martinsville, La., to Baltimore, Md. Of the remaining 11 rates listed in the restatement as not yielding out-of-pocket costs, besides the rate on empty barrels and bottles above, there are four rates on canned goods, four rates on pulpboard,

and two rates on synthetic plastics. The canned goods rates are from New Orleans, La., to Baltimore, Md., (rate—99 cents, out-of-pocket cost—102.6 cents, ratio—96), from New Orleans, La., to Rochester, N. Y., (rate—106 cents, out-of-pocket cost—115.3 cents, ratio—92), from Gulfport, Miss., to Philadelphia, Pa., (rate—101 cents, out-of-pocket cost—103.6 cents, ratio—97), and from St. Francisville, La., to Miami, Fla., (rate—92 cents, out-of-pocket cost—95.2 cents, ratio—97). The four rates on pulpboard are from Bogalusa, La., to New York, N. Y.,<sup>6</sup> and from Kreole, Miss., to New Brunswick and Wharton, N. J., and to New York, N. Y.<sup>6</sup> Respectively, these pulpboard rates are 92, 88, 90 and 88 cents, their restated out-of-pocket costs are 95.5, 91, 91, and 91 cents, and their ratios are 96, 97, 99 and 97. The two rates on synthetic plastics are from Baton Rouge, La., to Baltimore, Md., and Rome, N. Y. Respectively, these rates are 109 and 122 cents, their restated out-of-pocket costs are 113 and 123.8 cents, and their ratios are 96 and 99.

The minimum weights used in computing the restated costs in connection with these 11 rates are the tariff minima, and in instances where the tariff minima exceed 40,000 pounds and the shipments would necessitate using two trailers the minimum weights used are half of the tariff minima. As seen, the ratios of these 11 sea-land rates to their restated out-of-pocket costs range from 52 to 99 percent. Excluding the empty barrels and bottles rate, the ratios range from 92 to 99 percent. From the usual standards, since these 11 rates do not cover out-of-pocket costs, they should be considered as not shown to be compensatory, and a finding should be made that they are not shown to be just and reasonable.

One of the principal matters in dispute between the parties concerning the development of sea-land costs is the

6. The rates listed on pulpboard from Bogalusa and from Kreole to New York, N. Y., apply only to stations in New Jersey taking the New York, N. Y., rates, and a higher listed rate applies to New York, N. Y., from Kreole. The higher listed rate exceeds out-of-pocket cost in the restatement.

use by Pan-Atlantic of a factor of 75 percent in computing its vessels and port out-of-pocket expenses. Pan-Atlantic's computations of its costs are based on its experience on five voyages. Of the 226 trailer boxes carried per voyage the average was 75 percent loaded boxes and 25 percent empty boxes. Pan-Atlantic feels that in time its voyages will enjoy 100 percent loaded trailer boxes, and therefore that only 75 percent of the vessel costs were out-of-pocket expenses. To reach 100 percent of capacity on every voyage a perfect balance of traffic would have to exist between northbound and southbound traffic, and between all legs or ports on a voyage. If the traffic were to double additional vessels would be required. The Cost Section used 100 percent of direct expenses before the addition of overhead to determine the out-of-pocket water costs of Pan-Atlantic. The treatment of out-of-pocket costs by the Cost Section is amply justified by the facts of record, and by usual costing methods. Reference should be made to Appendix "B" on other matters of costing methods in issue herein.

**THE COMPARATIVE VALUE OF THE SEA-LAND SERVICE.** The primary accomplishment of its sea-land trailership service in the opinion of Pan-Atlantic lies in the reduction of the internal operating expenses of Pan-Atlantic, rather than in any substantial improvement in the value of its service to the public. On the other hand, the opposing carriers generally contend that there has been a substantial change in the character of Pan-Atlantic's service from the old break-bulk service to the new trailership service, and particularly in its value to the shipping public. Pan-Atlantic's own literature and public advertisements promise that the shipper using its trailership service will save transportation costs, avoid delays, prevent damage, and accomplish reduction in loss, damage and pilferage. To substantiate their contentions, Pan-Atlantic and the opposing carriers offered the testimony of numerous shippers. Generally, the direct evidence of these witnesses was in the form of

verified statements received as exhibits, and their cross-examination was oral.

The views of the shippers as a whole were many, varied and seemingly contradictory, according to their individual transportation problems. The most important factor to the shippers as a whole is the measure of the rates. The shippers want reasonably low rates to be available, and they want these rates available by as many different or competing modes of transportation as possible. One shipper of frozen orange juice and other products offered statements in behalf of both Pan-Atlantic and the railroads. With the exception of frozen concentrates, the commodities referred to by the shippers in behalf of the railroads are not commodities on which the rates herein are under investigation. The evidence offered by these shippers was admitted because of its relevancy to the facts and issues herein, particularly insofar as it pertains to the general nature and value of the sea-land and all-rail boxcar services.

Many shippers would not use sea-land service at rates equal to or higher than all-rail or all-motor carrier rates. A number of shippers also would not use sea-land service at rates higher than those of Seatrain. Some shippers, which would not use sea-land service if Pan-Atlantic rates were equal to rail rates, also would not give any of their traffic which is moving via sea-land service to the railroads if the present higher rail rates are maintained at the present differentials over sea-land rates. Some shippers would not use all-rail service even at differentials under all-motor carrier or under sea-land rates. At least one shipper would use sea-land at rates equal to rail rates because of the drayage expense when using rail service. Many shippers state that sea-land rates should be differentially under rail rates, and many shippers state that rail rates should be differentially under sea-land rates. In the past, one shipper used Newtex and Seatrain only where those carriers provided differentials under all-rail rates. Price competition in the sale of some commodities is so keen that the shippers of



these commodities cannot pay a transportation premium for one mode of service as against another mode of service:

**TIME IN TRANSIT.** Time in transit is a factor considered by many shippers along with rates and other factors in determining the value of a transportation service. Many shippers have found all-rail or all-motor carrier service to be faster than sea-land service. Other shippers have found sea-land service to be faster than all-rail service. Time in transit is important to some shippers during certain seasons only. For example, a shipper of air-conditioning equipment during the colder weather months is concerned principally with low rates and transportation charges, but during the warmer weather months he is willing to pay higher rates to get faster service. Most of his shipments move in the colder months. Time in transit is not important on consignment stocks to warehouses. Time in transit varies widely from commodity to commodity, and according to origins and destinations.

A study by the rail carriers using a random sampling technique showed average transit times by rail of 10 days from New England to the southwest, 9 days from New England to the south, 9 days from Trunk Line territory to the southwest, and 8 days from Trunk Line territory to the south. This study showed that the rail service was extremely inconsistent. Certain advertised rail schedules were introduced by Pan-Atlantic. Times shown are 5 days from New York, N. Y., to Jacksonville, Fla., 4 days from Philadelphia, Pa., to Tampa, Fla., 5 to 7 days from Baltimore, Md., to Miami, Fla., and 4 to 6 days from these origins to Dallas and Ft. Worth, Tex.

A study made by Pan-Atlantic showed average transit times by sea-land on four voyages during November and December, 1957, of 13.98 days from eastern origins to Dallas and Ft. Worth, Tex. Rail carriers point out that the latest sea-land schedules show that the vessels move between Newark and Houston in 6 days, between Newark and



Miami in 3 days, and from Tampa to Newark in 4 days. Allowing 2 days at both origin and destinations for the "land" portion of the trip, and adding the "sea" schedule, the rail carriers obtain total transit times somewhat faster than those obtained by Pan-Atlantic in its study. The rail carriers contend that the Pan-Atlantic study covers movements when the sea-land service was new and subject to operational difficulties which plague every new venture.

The rail carriers contend that where there were no holidays or other exceptional circumstances, and where the motor carrier operations of the sea-land service were conducted with reasonable dispatch, that the sea-land transit times were as fast or faster than all-rail. Generally, Pan-Atlantic has been able to adhere very closely, if not almost exactly, to the "sea" portion of its scheduled sea-land service. Of course, collisions, accidents, and severe storms at sea are always a possibility, and these factors no doubt will at some time in the future disrupt sailing schedules. In the past in its prior services, Pan-Atlantic has suffered from fog, storms at sea, collisions and a sinking, as well as from numerous labor disturbances, strikes or tie-ups. In fact, one witness considered it about normal to have some sort of tie-up on the docks in the New York port area. The railroads and motor carriers also are subject to the possibility of labor tie-ups and weather conditions such as snow or sleet which may slow their services. Sea-land is faced also with the possibility of a break-down of a vessel while in service and other vessels are not available as spare equipment, which is a more serious matter with Pan-Atlantic than with the motor carriers and railroads, which have substitute equipment more readily available.

Turning from the sea portion of its service to the land portion, the time cannot be accurately estimated. As seen, the proper sequence of loading a ship requires many of the trailers to be delivered to the parking lot adjacent to a port at least 60 hours in advance of sailing time. Of course, an individual shipment might be delivered with

much less time to spare and yet be in time to be loaded on board the trailership. That individual shipment may show a very fast total time in transit compared to other shipments moving on the same trailership. Once a sea-land shipment is in the hands of a connecting motor carrier, it may be delivered promptly or held up at the convenience of the motor carrier. In other instances delivery may be delayed for the convenience of a consignee. One thing is clear and that is that the time consumed in loading and discharging a trailership in sea-land service is less than the time of loading and discharging a break-bulk ship in the prior break-bulk service. Where it took two days for loading in the break-bulk service, it appears that one day would suffice in the sea-land trailership service. This saving in time no doubt varies from port to port depending upon the amount of cargo or trailers to be loaded or discharged at a particular port. To the extent that comparable transit times justified differentials in the Pan-Atlantic rates for its break-bulk service under the all-rail rates, it would appear that there is somewhat lesser justification for such differentials in connection with the sea-land trailership service. Where there are several ports or legs of a sea-land journey, the saving in the time factor for loading and discharging cargo might be considerable in connection with a shipment which remained on board the trailership for several legs of a voyage.

**FREQUENCY OF SERVICE.** Frequency of service or sailings is another factor cited by many shippers. In many instances the railroads and the motor carriers provide daily service or more frequent service than the once or twice-a-week service of sea-land. By rail a shipper may ship every day, but using sea-land he may have to bunch his shipments. A shipper may suffer disadvantage by missing a Pan-Atlantic sailing when he is seeking to replenish a low inventory at a destination point. On the other hand, some shippers may have difficulty in securing rail equipment on short notice for dispatching the same day to meet emer-

gency stock requirements. In some instances rail switching service is only semi-weekly, so that some shippers must order cars in when the switching service is provided, and a shipper may make arrangements to have a car placed a day before it is needed.

Sea-land service once or twice a week from the ports has not proved to be materially disadvantageous to some shippers because many consignees can anticipate their needs and have sufficient storage space to keep goods on hand between ship arrivals. Some shippers consider that specific sea-land sailing dates and delivery dates are consistent, and that there are inconsistencies in rail departures and uncertainties in rail arrivals and delivery dates. The importance of frequency of service varies from commodity to commodity, and according to the individual needs of the various shippers.

**COSTS OF LOADING OR OF UNLOADING.** Another factor considered by shippers in determining the value of a transportation service is the cost of loading or of unloading a trailer versus a box car. Pan-Atlantic's tariffs provide that in the sea-land service, subject to certain restrictions and limitations, the truck driver will load and unload the trailers from and to points near the tailgate. In actual practice the driver is given considerable latitude. Generally, the Pan-Atlantic sea-land service driver will provide the same service in loading and unloading as is provided by motor common carriers in all-motor carrier service. By contrast, the shippers and consignees are required by the rail tariff provisions to load and unload rail carloads without any assistance from rail employees.

One shipper found it necessary to have an additional man compared with the man-power needed for rail shipments to load sea-land trailers because its plant was constructed for rail shipments. Many shippers found that additional men or man-hours were required to load rail cars compared with sea-land trailers. Loading and unloading or assistance in these operations by the truck driver

is not desired by some shippers and consignees, and such services although provided by the tariffs often are not used. Beer and ale are loaded and unloaded by a shipper and his distributor-consignees with their own labor, whether the beer and ale is shipped in trailers or in rail cars, but in this instance the Pan-Atlantic tariff requires by appropriate restrictions or limitations that the loading and unloading be by the shipper because of the weights of the pallets. Lift trucks are used by the shipper in this loading operation.

Some shippers feel that the assistance of the truck driver in loading or unloading is offset in the use of rail cars by the provisions of 48 hours free time for loading or unloading. Generally, in sea-land service as in all-motor-carrier service the trailers must be unloaded promptly upon arrival, but there are exceptions to suit the carriers' and shippers' conveniences. Some shippers are able to order trailer equipment and have it spotted within two hours. In some instances, Pan-Atlantic will place its trailers for loading two or three days prior to actual sailing dates, thereby enabling a shipper to load equipment at times when the shipper's warehouse labor otherwise would be idle. Many shippers have found the substantial differences in the cost of loading trailers and rail cars, and this factor to these shippers has not been a determining element in their selection of the mode of transportation.

The warehouse labor of some shippers was equally available whether called upon to load and unload sea-land trailers or rail box cars, and therefore the costs of loading and unloading were the same for each mode of transportation. Some shippers found it less expensive to unload sea-land shipments than rail shipments, for one reason because of the convenient placement of trailers, and for another reason because on a rail shipment a shipper may have to wait for switching crews. Loading and unloading costs vary widely from commodity to commodity, and from shipper to shipper.

**BLOCKING, DUNNAGE, AND BRACING.** Another factor considered by some shippers is the cost of blocking, dunnage, and bracing of shipments. Costs for strapping and flooring paper for rail box cars including labor was greater for one shipper than its costs for these items when it used sea-land trailers because sea-land provided some of the labor for stacking the lading in the trailers. Some shippers have found it more economical to load a trailer than a rail car because the former needs less dunnage, blocking, and bracing than the latter. Cleaning rail cars has been added expense for some shippers. Other shippers have experienced no differences in these costs whether using trailers or rail cars. Generally less dunnage or no dunnage is required when damage free or compartmentizer cars are used. Many shippers found that dunnage, blocking, and bracing costs were not a factor in determining the mode of transportation utilized. The requirement of dunnage varies widely from commodity to commodity.

**DOOR-TO-DOOR SERVICE.** Door-to-door service is an important consideration to many shippers. In sea-land-service since the lading often moves in a sealed trailer from the door of the consignor to the door of the consignee without being handled enroute, the result is practically no damage. Also, there may be considerable convenience to the consignee in that various grades and sizes of articles will arrive already stacked and sorted in a manner that will save time and labor at the destination.

Where a shipper or consignee does not have a private or assigned rail siding, the sea-land service has a distinct advantage over rail service, the same as does all-motor-carrier service. One shipper does not have private sidings at its Miami and New Orleans warehouses and would not use all-rail service even at differentials under all-motor-carrier or under sea-land rates. Some New York City consignees do not have private or assigned sidings, making drayage necessary when using all-rail service, whereas no drayage expense is incurred in using sea-land service.

Where drayage is necessary there is also the likelihood of damage due to the extra handling of the lading. At least one shipper would use sea-land service at rates equal to all-rail rates because of the store-door delivery feature which is not available via all-rail. Another shipper believes that all-rail rates should be differentially lower than sea-land rates for numerous reasons including the cost of installation and maintenance of rail private siding facilities, and the cost of drayage. A survey made by Pan-Atlantic showed that out of 2,350 of its potential shippers and consignees, 1,805, or about 77 percent, had private rail sidings, while 545 were either off track or were served by team tracks.

**DAMAGES OR LACK OF DAMAGES TO THE LADING.** Another factor in the value of service is the matter of damages or lack of damages to the lading, and the related matters of inconvenience to customers and goodwill. Generally, the experience of shippers using sea-land service has been that it entails either negligible or no loss, damage, pilferage, or breakage. A distributor of liquors shipped about 3,500,000 pounds in a year from an origin in Pennsylvania to its Texas warehouses entirely damage free using sea-land service. Also, some shippers have found that the present sea-land service is not as subject to weather conditions as were the vessels in the old break-bulk service with cargo in open holds.

Many shippers have found that rail shipments are damaged frequently. Some shippers suggest that rail box car rates should be differentially lower than sea-land rates to offset the expense and inconvenience resulting from loss and damages on rail shipments. Many other shippers do not consider loss and damages as a factor determining the mode of transportation.

So-called damage free and compartmentizer cars are available to shippers in railroad service to a limited extent. The percentage of such cars compared with the total number of box cars is very small. When damage free cars or com-



partmentizer cars are used, damages generally are negligible. Some shippers have found in using such special cars that their expenses of loading are increased. The higher purchase costs of damage free and compartmentizer cars has deterred the railroads from investing their capital on a large scale in these types of equipment. Although most shippers desire to use such special cars when available, generally these cars have not been readily available.

Oddly, one shipper of bottle caps from Brooklyn, N. Y., which caps are not subject to damage, nevertheless used damage free cars entirely, apparently because such cars were available when the bottle caps were to be shipped.

**STOP-OFF PRIVILEGES.** Some shippers use railroad stop-off privileges frequently. A number of shippers use all-motor or all-rail service because of the availability of stop-off arrangements, such as storage in transit, diversion in transit, and milling in transit. The sea-land service provides stop-off privileges in connection with the land portions of the service. Some shippers consider the sea-land service to be more flexible than all-rail service, in that three sea-land deliveries are permitted in a given city with no penalty other than the stop-off charges. The stop-off charges via railroads are \$18.09 in Official territory, and \$16.20 in the Southwest, compared with the sea-land stop-off charge of \$13.00, and the lower sea-land charges are advantageous to some shippers.

One shipper found that the rail stop-off charge at Dallas, Tex., on a shipment from an eastern origin to Houston, Tex., was too expensive because he had to pay the rail freight rate to Houston, but using sea-land service through the port of Houston, this shipper was not subjected to the same disadvantage. A traffic study by the rail carriers for the period of December 2 to 6, 1957, inclusive, of shipments from northeastern States to southern and southwestern States showed that out of 1,326 cars, 122 were stopped off for partial loading or unloading, and of these only 12 cars, or less than 1 percent, were stopped in



intermediate territory beyond the reach of sea-land competition.

**OTHER VALUE OF SERVICE CONSIDERATIONS.** One of the principal considerations in the shippers' determination of the value of water carrier services is the uncertainty of the service due to the perils of the sea. This uncertainty will remain with any water carrier because of the uncertainty of the weather at sea, but no doubt the uncertainty will decrease in degree as the future brings on better weather-predicting methods and other technical advances.

Lower minimum weights available in instances in sea-land service and concurrent higher minima in railroad service at times will result in different inventory costs for some shippers. Also, in rail service there are extra charges for protective services against heat and cold, whereas in sea-land service such charges are included in the sea-land rates.

The railroads have the ability to handle oversized freight, whereas sea-land trailers are limited to articles about 34 feet long, and there are state highway weight limitations for trailers. So far as this record shows, little or none of this oversized freight is moving in the areas in which sea-land competes.

**GENERAL DISCUSSION AND CONCLUSIONS.** Only the sea-land rates of Pan-Atlantic, and not other rates such as the all-rail box-car and motor common-carrier rates, are under investigation herein. Pan-Atlantic emphasizes that it cannot exist without differential rates, that is, sea-land rates differentially lower than all-rail rates, and lower than all-motor common-carrier rates. The railroad protestants take the view that regardless of whether the Commission approves or disapproves the new sea-land rates there should be no prescription or order which would establish a relationship between the sea-land and the all-rail rates.

In I. & S. No. 6847, *Fresh or Frozen Foods—Sea-Land—Pan-Atlantic SS Corp.*, protestant, Southern Motor Car-

riers Rate Conference, Inc., requests findings that Pan-Atlantic has failed to establish that the proposed level of sea-land rates on frozen citrus juice concentrates is necessary for Pan-Atlantic to fairly compete with motor common carriers, that the motor common carriers depend for their very existence upon this traffic and will lose substantial tonnage to Pan-Atlantic through these rate reductions, that Pan-Atlantic will create destructive competition with resulting needless and wasteful dissipation of common carrier revenues, and that Pan-Atlantic has failed to establish that the proposed rates are reasonably compensatory.

The sea-land rates here in issue generally, with the exceptions previously noted, are reasonably compensatory. Nearly all of the rates exceed out-of-pocket costs, and about 70 percent cover fully-distributed costs. Aside from considerations of their effect on competitive rates of other modes of transportation, the sea-land rates as a whole are just and reasonable per se.

Section 307(f) of the Act provides that in prescribing just and reasonable rates by water, the Commission shall give due consideration to the effect of the rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed, to the need, in the public interest, of adequate and efficient water transportation service at the lowest cost consistent with the furnishing of such service, and to the need of revenues sufficient to enable water carriers, under honest, economical, and efficient management, to provide such service.

This section does not require that consideration be given to the effect of the rates upon the movement of traffic by carriers other than those for which the rates are prescribed. Pan-Atlantic contends that it should not be forced to charge rates higher than required by its operating costs and higher than it formerly charged with relation to the rates of competing carriers for the sole purpose of protecting the revenues of those competing carriers. Presently, the sea-land rates under investigation are differentially un-

der corresponding all-rail rates by lesser amounts than the differentials formerly maintained in connection with the break-bulk service of Pan-Atlantic. At the same time, Pan-Atlantic's costs of operation under its sea-land service are from \$10 to \$12 a ton less than those costs under its break-bulk service. The reductions in operating costs are mainly those at the terminals or ports. Pan-Atlantic, accordingly, states that the protestants which contend that Pan-Atlantic rates should be higher are in the anomalous position of urging that Pan-Atlantic be required to charge the shipping public more for an operation that costs Pan-Atlantic less to perform than its previous operation, and that the effect would clearly be to discourage betterments in transportation efficiency and to deprive the shipping public of the advantages in improved transportation methods.

Section 15a(3) of the Act provides that in a proceeding involving competition between carriers of different modes of transportation, in determining whether a rate is lower than a reasonable minimum rate, the Commission shall consider the facts and circumstances attending the movement of the traffic by the carrier or carriers to which the rate is applicable. The section is silent as to whether the facts and circumstances attending the movement of traffic by carriers of other modes of transportation may be considered, but the section does provide further that rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the national transportation policy.

It is declared national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the Interstate Commerce Act, so administered as to recognize and preserve the inherent advantages of each, to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several car-

riers, all to the end of developing, coordinating, and preserving a national transportation system by water, highway and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of the Interstate Commerce Act shall be administered and enforced with a view to carrying out the declared national transportation policy.

The specific reference in section 15a(3) to the national transportation policy clearly qualifies the preceding clause in that section. The national transportation policy is meant to develop, coordinate, and preserve an adequate national transportation system by water, highway and rail, as well as by other means. The use of the word, "and", means that the system must be adequate by each of the several modes.

In the present proceedings we are concerned mainly with the rates of a water carrier and with the development and preservation of a national transportation system by water. Pan-Atlantic is one of only two deep-water common carriers operating in the Atlantic-Gulf coastwise trade. Disapproval of the rates under investigation herein would be very likely to force Pan-Atlantic out of this trade, especially since the record shows that not a pound of traffic is moving via Pan-Atlantic except at rates lower than rail rates. On the other hand, approval of the rates conceivably may lead to the considerable loss of traffic to the rail carriers and to the motor common carriers. Transportation by highway and rail also must be developed and preserved under the national transportation policy.

By the findings herein it is not intended that there be any prescription or approval of specific differentials or relationships of these sea-land rates under the all-rail rates. Thus, the railroads may make rate proposals in the future, and justify them according to the individual facts and circumstances of a particular situation. The same statement also applies to the motor common carriers.

In *Savage Application*, 265 I. C. C. 157, the future public convenience and necessity was found to require the operation by applicant as a common carrier, by self-propelled vessels, in the transportation of motortruck trailers, loaded or empty, and commodities generally, when loaded in motortruck trailers of motor common carriers, between the ports of Norfolk and Baltimore. Division 4 stated in the report therein that, where the advantages of two modes of transportation may be coordinated in order to promote an efficient transportation system, we should sanction the resulting service, due regard being given to the protection of the public and the existing carriers.

In the present proceedings, the sea-land service offers a coordinated service which is not entirely new, but is new in economy and efficiency insofar as the method of loading and discharging the vessels has been speeded up and changed compared with the old method used in the break-bulk service. This relatively new sea-land service should be encouraged and sanctioned under the national transportation policy, which requires the development, coordination, and preservation of adequate water transportation.

The Commission should find that 11 of the sea-land rates, including certain rates on empty barrels and bottles, canned goods, pulpboard and synthetic plastics, as shown in the footnote number 7, have not been shown to be just and reasonable; and that the other sea-land rates in at least about 458 instances are just and reasonable, and do not constitute an unfair or destructive competitive practice in contravention of the national transportation policy. An order should be entered requiring the cancellation of those rates found unlawful, and the proceeding should be discontinued.

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7. Shipping carriers (empty barrels and bottles) from Daytona Beach, Fla., to Philadelphia, Pa., canned goods, from New Orleans, La., to Baltimore, Md., from New Orleans to Rochester, N. Y., from Gulfport, Miss., to Philadelphia, and from St. Francisville, La., to Miami, Fla., pulpboard from Bogalusa, La., to New York, N. Y., and from Kreole, Miss., to New Brunswick and Wharton, N. J., and New York, N. Y., and synthetic plastics from Baton Rouge, La., to Baltimore, Md., and Rome, N. Y.

# APPENDIX A

## RATES, COSTS, AND COST RATIOS

(Rates and costs in cents per 100 pounds; Ratios in percents; Min. weights in 1,000 pounds; SL is Sea-Land; OP is out-of-pocket; FD is fully-distributed; PA is Pan-Atlantic; MC is motor carrier; AR is all-rail.)

		<i>Sea-Land</i>		<i>OP Costs</i>			<i>FD Costs</i>			<i>Ratios SL Rates to Costs</i>		<i>All-Rail Rate and Costs</i>				<i>Ratios SL to AR Costs</i>	
		<i>Min.</i>	<i>Rate</i>	<i>PA</i>	<i>MC</i>	<i>Sum</i>	<i>PA</i>	<i>MC</i>	<i>Sum</i>	<i>OP</i>	<i>FD</i>	<i>Min.</i>	<i>Rate</i>	<i>OP</i>	<i>FD</i>	<i>OP</i>	<i>FD</i>
Frozen fruit concn.	Dade City, Fla.-	36*	159	55.2	53.7	108.9	63.9	79.9	143.8	146	111	36	168	165.3	196.3	66	73
	Boston, Mass	80*	141	55.2	53.7	108.9	63.9	79.9	143.8	129	98	120	145	64.6	95.7	169	150
Citrus pomace w/o syrup	Tampa, Fla.-	40	106	52.0	39.6	91.6	60.2	55.5	115.7	116	92	40	112	95.3	127.3	96	91
	Boston, Mass.	80@	92	52.0	39.6	91.6	60.2	55.5	115.7	100	80	60	97	70.4	102.4	130	113
Synthetic plastics	Baton Rouge, La.-	70#	128	58.4	41.8	100.2	67.6	62.9	130.5	128	98	70	133	64.4	95.7	156	136
	Berlin, Conn.	40	161	51.1	38.4	89.5	59.2	59.5	118.7	180	136	—	—	—	—	—	—
Aluminum articles	Massena, N. Y.-	30	228	73.8	119.7	193.5	85.5	157.8	243.3	118	94	30	241	142.6	180.2	136	135
	Dallas & Ft. Worth, Tex.	40	214	55.7	98.3	154.0	64.5	136.4	200.9	139	107	40	208	112.5	150.0	137	134
Coffee	Freehold, N. J.-	30	124	49.7	71.7	121.4	57.5	100.3	157.8	102	79	30	131	84.9	107.5	143	147
	Jax, Fla.																
Copper rods	Bayway, N. J.-	40	129	64.6	—	64.6	74.8	—	74.8	200	172	40	140	75.9	100.3	85	75
	Tampa, Fla.																

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### WEIGHTS USED IN COMPUTING COSTS:

- \*—35,000 Pounds used because of max. load per trailer in refrigerated vans in New Jersey—Docket I. & S. No. 6985.
- #—35,000 Pounds used as load per trailer when two trailers used for 70,000 pounds.
- @—40,000 Pounds used as load per trailer when two trailers used for 80,000 pounds.



## APPENDIX B

## RATIONALE OF COST FINDING SECTION

*Pan-Atlantic's cost studies and criticism of protestants' cost evidence:*

The Pan-Atlantic costs consist of steamer costs, stevedoring costs, port charges, interest and depreciation charges on trailer vans, pickup and delivery costs, and overhead expense. The steamer costs were computed for a representative voyage based on a 14-day roundtrip schedule. The costs for the voyage were divided by the average ton-miles per voyage to obtain a cost per ton-mile. The ton-miles were based on the average tons and distances per voyage for 5 full voyages operated during the latter part of 1957 in the sea-land service. The cost per ton-mile was reduced to an out-of-pocket basis by applying a factor of 75 percent to the total. The factor of 75 percent was based on the fact that the first 5 vessels for which costs were developed had a 75 percent load factor, that is, 75 percent of the trailer vans carried were loaded and 25 percent carried were empty. Respondent contends that any additional amount of tonnage above that actually handled by the first 5 voyages could have been handled without any additional vessel expense. The out-of-pocket costs per ton-mile were then multiplied by the actual distances between ports to obtain the port-to-port cost per ton which was converted to a cost in cents per 100 pounds.

The stevedoring expenses include the cost of operating the cranes on the ships by longshoremen, the cost of loading and unloading the vans, and the hauling of the vans with tractors to and from the parking lots adjacent to the dock, and the wages of supervisory forces. The stevedoring costs were based on the actual number of longshoremen needed to load and discharge the traffic at each port of call during the operation on which the cost study was based. Stevedoring costs also include depreciation and the interest paid on the purchase price of tractors and chassis used in



hauling the boxes between the ships and parking lots. The stevedoring expense was related to the weight handled to obtain a cost per 100 pounds. An out-of-pocket level was obtained by applying a ratio of 90 percent to the total in order to reflect the fact that certain costs for the tractors and supervisory expenses are not 100 percent variable with changes in traffic volume as are the costs for longshoremen.

Port charges include pilotage, tug hire, handling lines, wharfage and dockage. Costs were based on the actual expense incurred on the first 5 voyages operated in the sea-land service in the latter part of 1957. Costs for those ports not served at the time the voyages were operated were developed on the basis of past experience for other ports for the volume of traffic estimated to be handled. Port charges were related to the weight handled at each port to obtain a cost per 100 pounds. The same level of out-of-pocket cost as was used for the vessel expenses, namely 75 percent, was applied to the port charges, for the same reasons given under vessel expense. A cost for the interest and depreciation on trailer vans, excluding chassis while being transported port to port, was included. The depreciation was based on a 10-year service life with a 10 percent salvage value and was developed separately for refrigerator vans and for general cargo vans, as the cost of the former is greater and the utilization less. The out-of-pocket costs for the depreciation and interest on the vans was based on 75 percent of the total, the same as for vessel expense. The out-of-pocket costs were related to the active van days, 200 days per year, for refrigerator vans and 250 per year for general cargo vans, to obtain a cost per active van day. The costs per active van day were then multiplied by the days between ports plus one day in the loading port and one day at the discharge port to obtain the cost between ports.

The Pan-Atlantic motor terminal pickup or delivery cost includes all costs of terminal operation for the pickup and delivery and interchange of the trailer vans. Since these proceedings concern the cost of handling truckload

shipments only, the cost for handling truckload shipments at the motor terminals was developed separately from the less-truckload, and for this purpose special studies were made during a week in December, 1957, at Port Newark, Houston and Tampa. Costs were developed for pickup or delivery service by Pan-Atlantic and for the interchange of truckload shipments with connecting motor carriers. The pickup and delivery and interchange costs per truckload were related to the weight per shipment to obtain a cost per 100 pounds which reflects the difference in cost for the varying loads. An out-of-pocket level was developed by applying a ratio of 96 percent to the total expenses in order to reflect the fact that not all pickup and delivery or interchange expenses are directly variable with traffic volume.

Overhead expenses applicable to the Pan-Atlantic sea-land services were based on the overhead expenses for both the Pan-Atlantic and Waterman Steamship Company operations. Based on 1956 operations the ratio of overhead to total expenses was 9 percent and for the first 9 months of 1957 it was 8.2 percent. For this proceeding a figure of 10 percent was applied to all Pan-Atlantic costs to include an allowance for overhead.

Fully distributed costs for Pan-Atlantic operations were developed by dividing the full costs, including overhead, by an operating ratio of 95 percent. The figure of 95 percent was used in order to provide an adequate allowance for return because of the fact that the total operating expenses, taxes and charter hire absorb a very large percentage of total revenues. Respondent contends that the computation of an allowance for return based on the depreciated book investment does not give adequate recognition to Pan-Atlantic's revenue needs because of the relatively small size of the carrier's investment resulting from payment of rents and charter hire for the use of facilities and vessels.

The connecting lines motor carrier costs were developed for representative carriers in 4 regions. The costs

were developed for a group of 7 carriers in the New England region; 8 carriers in the Middle Atlantic region; 4 carriers in the Southern region; and 6 carriers in the Southwest region by applying a cost formula known as Highway Form B, 8-55, Statement No. 3-55 of the Bureau of Accounts, Cost Finding and Valuation to the 1956 expenses and statistics for each group of carriers. The costs based on 1956 expenses were adjusted to a more current basis by applying a ratio of cost per ton for the first 3-quarters of 1957 to a cost per ton for the first 3 quarters of 1956. The line-haul cost per vehicle-mile was increased by 6 percent to allow for circuitry and was converted to a cost per hundred-weight-mile based on the average of the weight per shipment concerned and the round-trip load factor experienced by each carrier group in the handling of Pan-Atlantic's sea-land traffic. The round-trip load factor was obtained from a special study prepared by the motor carriers. The average pickup and delivery expense per hundred pounds was adjusted for the specific weight per shipment by the factors shown in the cost formula. The billing and collecting expense per shipment was divided by the weight per shipment to obtain a cost per 100 pounds. Platform expense was not included since the sea-land truckload traffic normally does not receive this service. The Highway Form B formula does not provide for the development of interchange expense separately from pickup and delivery expense, so respondent computed the interchange expense by taking one-half of the pickup or delivery cost. The factor of 50 percent was based on studies made by the Cost Finding Section of the Commission which showed that the expense of interchange was approximately one-half of the cost of pickup or delivery service. Where shipments exceeded the maximum weight capacity per van of 40,000 pounds but were less than 80,000 pounds motor carrier costs were based on an average load of 36,000 pounds. Out-of-pocket expenses were computed on a 90 percent of total basis as called for in the cost formula.

The motor carrier fully distributed costs were developed as prescribed in the cost formula except that respondent adjusted the constant terminal expense for size of shipment in the same manner as the out-of-pocket pickup and delivery expenses were adjusted, and that an operating ratio of 95 percent instead of 93 percent was used. The ratio of 95 percent is said to reflect more closely the actual operating ratio experienced by the carriers in the study.

Respondent developed rail boxcar costs for those movements where the rail carriers published a rate for the items proposed by Pan-Atlantic. Originally respondent used I. C. C. Statement No. 1-57 of the Bureau of Accounts, Cost Finding and Valuation as a source for its rail costs. These costs were based on expenses for the year 1955 and were adjusted by respondent for a level of wages and prices as of January 1, 1958, using a method similar to that used by the Cost Finding Section. Costs were developed for the Eastern and Western districts and the Southern region, and were applied to the rail movements in the respective areas. Subsequently respondent restated its Exhibit No. 7 in I. & S. Docket No. M-10415, et al., with the rail costs based on those shown in I. C. C. Statement No. 2-58, which provides costs based on the year 1956 and adjusted for wages and prices to a January 1, 1958 level. In its restatement respondent also costed the traffic moving through the Pocahontas region with Pocahontas region costs rather than Southern region costs. The rail costs in the corresponding Exhibit No. 7 of I. & S. Docket No. M-10698, et al., were not restated.

The rail costs reflect the tare weight of the car, allowance for empty return, net weight of load, and they include an allowance for circuitry of 13 percent over the short-line distance. For boxcars the tare weights were based on the territorial averages as shown in Statement No. 1-57. For refrigerator cars a tare weight of 40 tons was used which is supposed to reflect the additional weight of mechanical refrigerators which are used for the frozen food traffic. The

source of the 40-ton figure was not disclosed. The rail costs were developed on an out-of-pocket basis and on a fully distributed basis. The out-of-pocket portion includes 80 percent of operating expenses, rents, and taxes, plus 4 percent return on all of the equipment investment and on 50 percent of the road property investment. The fully distributed cost includes the out-of-pocket cost plus the remaining constant costs with the terminal portion of constant costs distributed over the revenue tons and the line-haul portion distributed over the revenue ton-miles. The rail costs include an allowance for loss and damage claim payments. Costs were not developed for the competitive movements by motor carriers or by the Seatrain lines.

*Protestants' cost studies and criticism of respondent's cost evidence:*

The protestant rail carriers introduced restatements of respondent's cost evidence which reflected the following changes: Protestants based the water costs on the experience of 5 voyages subsequent to those used by respondent and which showed somewhat lower average loads than the first 5 voyages; vessel expenses were taken to be 100 percent out-of-pocket; the fuel costs were based on the consumption of fuel while at sea for both the time at sea and in port; and the crew wages and corresponding taxes were increased for a greater allowance for overtime than that used by respondent. The rail costs were restated to reflect the expenses as of January 1, 1957, instead of January 1, 1958, and movements through the Pocahontas region were costed at the Pocahontas region costs instead of Southern region costs. In addition to costs for the rail carload minimums, costs were shown for maximum loads which could be carried. Protestants' rail costs made no allowance for loss and damage claim payments. Although protestants contend that the rail costs as of January 1, 1957, are appropriate, a subsequent exhibit was introduced in I. & S. Docket No. M-

10698 showing rail costs based on I. C. C. Statement No. 2-58, showing rail costs as of January 1, 1958. In its exhibits protestants showed the rail out-of-pocket costs for all items corresponding to those where rail costs were computed by respondent. The fully distributed costs were shown for only a selected 20 percent sample. Protestant, Sidney Alterman, President of Alterman Transportation Lines, Inc., a motor common carrier engaged predominantly in the transportation of perishable commodities, entered a number of exceptions to respondent's cost study. He stated that based on his company's experience the life of refrigerator trailers would not exceed 6 years, the refrigerating unit would not exceed 3 years, and the insulation would have to be renewed every  $2\frac{1}{2}$  years. He questioned the use of 10 percent salvage value on refrigerated boxes and the representativeness of the motor carriers included in the study by respondent which reflects general cargo carriers rather than carriers of refrigerated traffic. In response to criticisms of protestants, respondent placed in evidence an exhibit describing the construction of the vans and the refrigerating units. The vans are especially designed for the sea-land service and are built using heavy gauge materials and aircraft type construction. Nonabsorptive insulation is used throughout thus eliminating the need for renewal. The steel hardware is cadmium plated and special insulated tape is used at junctions of steel and aluminum to prevent corrosion. The refrigerating units are also especially designed for long life and make use of the largest compressors available from the manufacturers of the unit and include other special features to insure long life. As an example of the life expectancy of its vans, respondent's witness cited the use of similar type containers which have been carried on ocean going barges between ports in Alaska and Seattle and which were still in use after 7 years of service. It would appear, therefore, that the use by respondent of 10 years in depreciating the trailer vans is not unreasonable. Respondent's witness also stated that the scrap value of the



aluminum alloy used in the trailer bodies comprises a large part of the salvage value taken as 10 percent of the cost of the vans.

*Cost Finding Section's Comments on Pan-Atlantic's cost studies and criticisms:*

Respondent stated that its own costs were all inclusive. However, the record does not provide the basic data to verify this statement, and respondent's annual report does not show the expenses for the sea-land service separately from the total expenses for all services operated by Pan-Atlantic. The Commission should require that this separation with a proper allocation of overhead expense to the sea-land service and appropriate statistics be shown in respondent's annual report to the Commission so that in any future proceedings involving sea-land costs the basic expenses used by respondent may be verified. The costs were based on a 14-day round voyage covering 4 ports. Commencing at Houston, a vessel would stop at Tampa, Port Newark, Miami and then return to Houston. Costs based on this operation were applied to voyages which included stops at New Orleans, Mobile, Philadelphia and Jacksonville. According to the schedule introduced in I. & S. Docket No. M-10698, Exhibit 1, Appendix X, two different sets of voyages are now in operation. One schedule provides for direct service between Port Newark and Houston with no intermediate stops. Another schedule provides service from Port Newark via Miami to New Orleans and return via Tampa to Port Newark. Both schedules provide for a 14-day round trip. The effect of the change in schedules on the consist of traffic and costs is not shown in the record.

In developing the vessel expenses respondent failed to provide a separation of expense between the time the vessel was in port and the time the vessel was at sea but instead related all vessel expenses directly to ton-miles. This treatment results in understating the costs for shorter-than-



average hauls and in overstating the costs for longer-than-average hauls. From data available in the underlying working papers, it appears that for the 14-day voyage used for developing the costs, the time in port amounts to about 19 percent of the total. Where additional stops would be made this percentage would be even greater. The cost for the time in port should have been related to the number of loaded vans handled. The cost for the vessel while at sea should have been related to the loaded van-miles rather than the ton-miles in order for the final costs to reflect properly the different weight loads in each van.

Respondent used a factor of 75 percent for developing its vessel and port out-of-pocket expenses based on the utilization of the vans per voyage at the time of the cost study. Respondent feels that 100 percent utilization would be possible without additional vessel expense, and that, therefore, the 75 percent level of cost reflects what the cost would be if a 100 percent level of utilization were reached. This contention is not realistic in view of the manner in which the trailer-ships are operated. To reach 100 percent capacity on every voyage a perfect balance of traffic between northbound and southbound and between all ports would have to exist. Furthermore, because of the manner in which a vessel stops at intermediate ports only once during a round voyage, it is apparent that some traffic is back haul in nature, thus preventing complete utilization of vans between each port. Respondent fails to recognize the fact that if the traffic available were to double that additional vessels would be required. Thus, over a long period the vessel costs would vary almost directly with traffic volume. In the absence of evidence justifying the use of a load factor greater than that actually experienced on the 5 test voyages, it is believed that the cost should be based on the loads actually experienced rather than on 100 percent utilization which is reflected by use of the factor of 75 percent. Because data necessary to determine the out-of-pocket cost of vessel and port operations are not available, the

Cost Finding Section believes that the direct expenses before the addition of overhead is justified for use as an out-of-pocket level and this has been used in the restatement of respondent's water costs by the Cost Finding Section.

Respondent used the ratio of general overhead to direct expenses based on operations of both Pan-Atlantic and Waterman Steamship companies combined. Although the overhead expenses may not be readily separable as between the two companies and for the sea-land operations specifically, the proper amount of overhead to be allocated to the sea-land service can be obtained by special studies. In view of the unique type of operation represented by the sea-land service, it would seem that the latter procedure would be preferable to the use of an overall overhead ratio.

Respondent shows the cost of depreciation and interest on the cargo vans separately for refrigerator vans and general cargo vans, but it does not show the additional expense of operating the refrigerator vans either while in the terminal or on board the ship. Although such an expense is included in the total cost and apparently spread over all traffic, it would be preferable to reflect this expense separately.

Although respondent contends that it is its practice to top load those vans with less than average weights per shipment, it should be apparent that this is not always possible or practicable to do. For example, in the case of frozen foods or in the case of radios and television sets or other low density freight, it is unlikely that top loading would be practicable or even possible. A witness for the respondent testified that at Jersey City 35 percent of the local sea-land pickups of truckload freight received additional loading at the terminal, one truckload or volume shipload was handled per van and that top loading consisted of less-truckload freight. So far as the Jersey City terminal is concerned it would appear that in some instances it would be practicable to top load a volume shipment with another

volume shipment, in which case, an allowance for platform handling should be included.

In its restatement of respondent's costs the Cost Finding Section has given recognition to the fact that top loading of some low-weight truckload shipments is practiced by respondent. Where such additional loading has been considered to be feasible the average load experienced by respondent of 36,000 pounds has been used for computing the water line-haul cost instead of the minimum weight per shipment for shipments under 30,000 pounds. The average load of 36,000 pounds is used for all items where allowance is made for top loading because the record does not provide the average loads at which the various commodities actually moved. Allowance for heavier loading based on the latter information would be preferable. For those items where heavier loading would appear to be possible but where comparative rail costs have been computed for the same or approximate minimum weight per shipment, the water line-haul cost has been based on the minimum weight per shipment in order to provide comparability with the rail costs.

Respondent also contends that the connecting motor carriers top load the lighter weight shipments. The degree to which this may be practiced is not shown in the record. Therefore, in its restatement of respondent's connecting motor carrier line-haul costs, the Cost Finding Section has based those costs on the minimum weight per shipments weighing up to 40,000 pounds. In its treatment of pickup and delivery expense respondent assumed an average weight of 36,000 pounds in many instances for shipments weighing in excess of 40,000 pounds, the maximum capacity of a van. This ignores the pickup or delivery cost for the remaining weight of the shipment. The Cost Finding Section believes that where a pickup or delivery cannot be made by the use of one cargo van, the pickup or delivery weight should be based on the weight of the shipment divided by the least number of cargo vans required to provide such service. Thus, a 50,000-pound shipment would require

two vans and the pickup or delivery service would be costed at 25,000 pounds.

In computing the pickup and delivery and interchange expense for the connecting motor carriers, the respondent used the cost for pickup *or* delivery as the cost for pickup *and* delivery. The result was to understate the pickup and delivery and interchange costs by 50 percent. In a revised exhibit respondent adjusted these costs upward but still did not reflect the proper cost for interchange of one pickup or delivery plus 50 percent. In the Cost Finding Section's restatement of respondent's costs, the pickup and delivery and interchange expense has been corrected for this error.

In the development of constant expense for motor carriers respondent adjusted the constant terminal expense by the same factors used to adjust the pickup and delivery out-of-pocket costs for various weight brackets. This is incorrect since the constant expense per 100 pounds applies equally to all sizes of shipments and should not be further adjusted.

In its brief respondent contends that the all-rail costs, including those introduced by respondent, should not be compared directly with the sea-land costs because:

1. All-rail costs and sea-land costs are based on different periods.

2. All-rail costs are based on territorial averages while sea-land costs reflect specific conditions. Use of territorial average rail costs understates terminal expense for the large metropolitan areas.

3. Sea-land costs are affected by, among other things, the amount of connecting motor carrier haul and the presence and existence of a back haul in the connecting carrier movement.

4. At the higher weights methods of operation between sea-land and rail is radically different.

The Cost Finding Section feels that respondent's contention that the rail costs should not be compared directly with the sea-land costs has little merit for the following reasons:

1. The record shows that respondent adjusted the rail costs to a January 1, 1958, level of wages and prices to provide comparability with the sea-land costs computed for a 1957 level.

2. If respondent believed the rail terminal costs for the large metropolitan areas to be understated it should have endeavored to adjust the costs for such understatement. The large rail terminals are involved in many of the comparative all-rail movements, but there are also many movements involving small and medium size terminals. If costs are to be adjusted upward for the large terminals, they should be adjusted downward for the small terminals.

3. The fact that sea-land costs are affected greatly by the length of connecting motor carrier hauls and by back hauls of the connecting motor carriers are natural results of its type of operation. Merely because the rails do not share the same disabilities is no reason that the costs should not be compared.

4. The costs for higher weight shipments reflect the operating conditions or advantages for each mode of transportation. Because the railroads are able to obtain twice the weight load or more in a boxcar as can be loaded in a sea-land van without substantially increasing the cost is no reason why direct comparison of costs is invalid.

*Cost Finding Section's comments on protestants' cost studies and criticism:*

The out-of-pocket level of expense for the water movement has been discussed previously herein. In reply to protestants' use of 5 later voyages for computing water

costs respondent stated that there were 4 even later voyages which operated in excess of 75 percent loaded and that the average for the 14 voyages, excluding the 5 used by respondent amounted to 75.5 percent, which is roughly the same as the average of the voyages used by respondent. Considering the above facts, respondent's use of the original 5 voyages for development of the tonnage handled is considered to be proper. Respondent has shown the fuel cost at sea to be considerably different from the fuel cost in port and protestant is in error in not reflecting the difference in this cost. Tests made by respondent and based on actual operating experience show that an allowance for overtime of 45 percent rather than 50 percent used by protestants is proper.

In view of the fact that the Pan-Atlantic costs were based on operations in the later part of 1957 and motor carrier costs were adjusted to a 1957 level, protestants' contention that rail costs as of January 1, 1957, are proper is difficult to justify. The fact that protestants subsequently introduced rail costs for I. & S. Docket No. M-10698 based on I. C. C. Statement No. 2-58 which reflect a level for wages and prices as of January 1, 1958, would tend to nullify the contention that the costs for the earlier period were appropriate. As noted previously respondent also restated the rail costs for the movements in I. & S. Docket No. M-10415, et al. based on Statement No. 2-58. Unfortunately it did not do so for the movements in I. & S. Docket No. M-10698. Protestants' rail costs in I. & S. Docket No. M-10698 are deficient in that the fully distributed expenses are shown for only a limited number of items. Therefore, in order to provide both out-of-pocket and fully distributed costs for all items in its own restatement of respondent's costs, the Cost Finding Section has used the rail costs from respondent's Exhibit 123 in I. & S. Docket No. 10415 and from Exhibit 7 in I. & S. Docket No. M-10698. Although protestants' rail costs in I. & S. Docket No. M-10698 are somewhat lower than those shown by re-



spondent, the difference is not considered enough to greatly affect the comparative results. Protestants' rail costs are further deficient in that they do not include allowance for loss and damage claim payments.

Respondent acknowledged that the use of Pocahontas region costs were proper for movements through that region and used such costs in its restated exhibit. In reply to protestants' contention that rail costs should be based on maximum possible loads, respondent introduced an exhibit based on I. C. C. waybill studies for the year 1956 which showed actual loads per car to be considerably less than the maximum loads shown by protestants. The use of maximum possible loads for costing purposes has little value as it is the actual load at which the traffic moves that determines the cost per 100 pounds.

Concerning the representativeness of the motor carriers used in its cost study respondent stated that it computed costs for the principal motor carriers which handle sea-land traffic although one of the larger connecting carriers was omitted because adequate cost data were not available for that carrier. Respondent admitted that costs for carriers handling frozen food would be somewhat higher than those for general commodities but stated that the difference in cost would not be large enough to change the results of the study because the revenues from the frozen food traffic greatly exceed the costs. As a rough indication of what the increased cost of frozen foods would be, based on total expense per vehicle-mile, respondent computed the overall expense per vehicle-mile for 5 carriers of refrigerated food to be 35 cents. This amount is 4 cents per vehicle-mile greater than the average line-haul cost alone of 31 cents per vehicle-mile for the 25 carriers used in respondent's cost study. The actual cost per vehicle-mile would be somewhat less because the 35-cent figure includes terminal cost as well as line-haul cost. Although respondent should have included an allowance for the cost of operating the refrigerator vans while in possession of

the motor carriers, the Cost Finding Section believes that the motor carrier costs used by respondent in its cost presentation are sufficiently representative for purposes of these proceedings.

*Conclusion:*

A comparison of the proposed rates with the restated sea-land costs shows that for most movements the proposed rates exceed the costs. A comparison of the sea-land costs with the all-rail costs shows that for most movements where rail costs are shown, the sea-land costs exceed the all-rail costs. This latter relationship is more pronounced at high minimum weights.

218. [Clerk's certificate to foregoing transcript omitted in printing.]

219. In United States District Court, District of  
Connecticut

Civil action No: —

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD  
COMPANY, ET AL, PLAINTIFFS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE  
COMMISSION, DEFENDANTS

*Complaint.*

Filed February 1, 1961

## I

The Plaintiffs herein are The New York, New Haven and Hartford Railroad Company, a corporation of the State of Connecticut, having its principal place of business in that state, and the other railroads named in Appendix A which is attached hereto and made a part hereof. These railroads will be referred to as the "Railroads" or as Plaintiffs.

## II

This complaint is brought under, and the jurisdiction of this Court is conferred by, the provisions of 49 U.S.C. § 17(9); 28 U.S.C. §§ 1336, 1398, 2284, 2321 to 2325; and 5 U.S.C. § 1009. It is a civil action to enjoin, set aside and annul a report and order of the Interstate Commerce Commission, hereinafter referred to as the Commission. This report and order which embraces several Commission dockets is entitled: Investigation and Suspension Docket No. M-10415—Commodities—Pan-Atlantic Steamship Corporation. A copy of this report and order is attached hereto and made a part hereof and is marked Appendix B. It will be referred to as the report and order of the Commission.

The Plaintiffs were parties in the proceedings before the Commission which culminated in its report and order which was served on January 5, 1961.

## IV

Prior to 1957 Pan-Atlantic Steamship Corporation, now Sea-Land Service, Inc., which will be referred to as Pan-Atlantic, operated conventional break-bulk coastwise and intercoastal steamship service along the Eastern seacoast and between ports on that coast and the Gulf of Mexico for the transportation of freight. In this service the freight was transported by railroad or by motor truck to the pier where it was unloaded. The freight was then reloaded by slings and other stevedoring methods into the ocean-going steamship. At the destination port the process was repeated, the freight being unloaded from the ship to the pier and then reloaded into trucks or rail cars for delivery to the ultimate consignees. This type of operation was slow, and inefficient because it resulted in excessive cargo damage and pilferage and was unduly expensive both to Pan-Atlantic and its customers. This type of operation was the standard in the coastwise and intercoastal trades, the single exception being Seatrain Lines, which transported loaded rail freight cars on its ships. Seatrain has the service disabilities inherent in any transportation utilizing rail boxcars namely the expense incurred by the shippers and consignees in loading and unloading the freight, the necessity of large amounts of blocking and shoring to prevent damage to the lading and, despite the presence of blocking and shoring, the damage that inevitably occurs from the switching and shifting of rail cars. In addition, if the shippers and consignees are not located on rail sidings, there is the expense of draying the freight from the shippers' or consignees' platforms to the railroad siding.

In 1957, after some preliminary experimental ventures, Pan-Atlantic inaugurated a new and different type of water carrier service between the Northeastern and Eastern parts of the United States on the one hand and the Southeastern and

Southwestern parts on the other. A container was developed which could be attached to a highway chassis making the combination the counterpart of the ordinary trailer used by the interstate motor carriers of general freight. These containers, when loaded, are easily detached from their chassis and are transferred with their lading intact by cranes installed on the Pan-Atlantic ships to their holds or decks. At the destination port the process is reversed—the fully loaded containers are lifted from the ships and placed on highway chassis and thereafter as highway trailers are moved to the consignees' platforms. This service, from the standpoint of its transportation characteristics, is virtually the same as that offered by the interstate motor carriers. The freight moves directly from the shippers' platforms to the consignees' platforms without being unloaded. Damage and pilferage is eliminated and more important, from the standpoint of its competitive impact, since the container is a highway vehicle, service can be rendered to all shippers and consignees regardless of whether they are located on or near a railroad. Pan-Atlantic is thus in a position to offer its new service—which it has named Sea-Land 222 Service—not only to shippers and consignees in the port cities at which it calls, but to customers located throughout a vast hinterland emanating from the port cities. This service is explained in some detail at Pages 3-7 of Appendix B.

## V

In an effort to attract customers to its new Sea-Land Service, Pan-Atlantic widely advertised its superior features emphasizing that it offered the advantages made available by the motor carriers. In addition, pricing was proposed by the publication of motor-water-motor rates which undercut the rail rates for the movement of freight in boxcars between corresponding points by 5 to 10% in most instances and by greater percentages in other instances. Railroads, in the belief that Sea-Land was in fact, quality-wise, the equal of motor carrier service and therefore superior in quality to their own rail boxcar services, were greatly concerned that the discounted pricing proposed by Pan-Atlantic would compel them to reduce their

rates to remain competitive. This prospect was a disturbing one because the Railroads, burdened with increasing wage and material expenses, needed to keep their own pricing at the highest levels which would be competitively feasible. They therefore petitioned the Commission, which has statutory powers to regulate motor-water-motor rates, to suspend the proposed Pan-Atlantic rates and to place them under investigation to determine their lawfulness. In some instances the Pan-Atlantic rates were suspended and placed under investigation, and in other instances they were merely placed under investigation but allowed to become immediately effective. The report and order of the Commission, which is complained of here and which is Appendix B of this Complaint, deals with  
 223 over 700 of these reduced Pan-Atlantic rates. The rates that were under suspension are now in effect, the suspension period having long since expired.

## VI

After the World War II economic upheaval had subsided and conditions had begun to assume more normal patterns, the Railroads found that increasing amounts of their traffic were being diverted to other forms of transportation, principally to the over-the-road motor trucks. To combat this trend, new techniques in railroad transportation were diligently explored. One of the new techniques that offered the greatest promise was trailer-on-flat-car service, referred to as piggy-back or TOFC. In this service highway trailers—or containers that are readily convertible into highway trailers—are used to pick-up and deliver freight. After the freight is loaded into the trailer, it is moved over the highways to a centrally located rail terminal where the loaded trailer, without the power unit, is placed upon a railroad flat car. Usually two trailers are placed on one car. These flat cars, with the highway trailers on them, are moved in a freight train to another terminal convenient to the particular consignee's place of business. There the trailer with the load intact is moved over the highways to the consignee's door. By this combined type of operation, the inherent economics of long-haul rail transportation can be realized for the greater part of the movement, and the superior quality



224 features of motor carrier transportation which largely exist in picking up and delivering the freight, can be enjoyed by the Railroads' customers. TOFC service, which has many of the quality features offered by the motor carriers, has to some extent stemmed the erosion of railroad traffic to highway competitors.

In June of 1956 the Railroads inaugurated TOFC service between the Eastern and Southwestern parts of the United States. Since the service was the equivalent in many respects of that offered by the motor carriers, the rates were generally on parity with those of the motor carriers. Traffic for this new TOFC operation was slow in developing. When Pan-Atlantic inaugurated its new Sea-Land Service between the East and the Southwest late in 1957, TOFC in that field was confronted with a competitor which offered service of virtually identical quality—for it, like TOFC, moves the freight in highway vehicles with the only difference being that for the intercity movement Sea-Land hauls the trailers on a vessel whereas TOFC utilizes a rail car between cities—but which had pricing well below that of TOFC. This was so because the TOFC rates were on a level of the motor carrier's which was generally higher than that of the rail boxcar rates, while the Sea-Land rates were generally 5 to 10% below the rail boxcar rates. Thus, except in rare instances, the TOFC rates were well above 10% higher than the corresponding Sea-Land rates.

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## VII

Based on field studies which included surveys of the users and potential users of TOFC, the Railroads were convinced that TOFC could not compete with Sea-Land unless the pricing for the two services was substantially identical. They decided, therefore, that the TOFC rates would have to be reduced. Doing this presented difficulties because of the interrelationship between the TOFC rates, the rates of competing motor carriers and the rates of their own conventional boxcar services. In order to create the minimum of disturbance to this complex pricing relationship, it was determined that a limited reduced pricing test should be put into effect for the

TOFC operation between the East and the Southwest. A pilot group of rates were published from a few Eastern origins to two Texas cities, Dallas and Fort Worth, on parity with the Sea-Land rates between the same points. The remainder of the TOFC rates between the East and the Southwest were not reduced. It was believed that this pricing sample which included only 66 individual commodity rates would provide the experience for an informed judgment as to what should be the proper relationship between the TOFC and Sea-Land pricing.

### VIII

Pan-Atlantic petitioned to have this TOFC pricing experiment suspended. Other petitions for suspension were filed by SeaTrain Lines and the motor carriers. The rates were suspended and placed under investigation. These rates are not in effect today, the Railroads, having agreed to the continuation of the suspension pending the Commission's consideration of their lawfulness. One of the factors which prompted the Railroads to agree to the continuation of the suspension was the need for relief pursuant to Section 4 of the Interstate Commerce Act because the reduced TOFC rates resulted in some instances in charges for the longer hauls being somewhat less than for intermediate shorter hauls. Without Fourth Section Relief it would have been necessary to reduce the intermediate rates which would have resulted in the limited TOFC pricing experiment being greatly broadened. As of the time the record was closed, both because of the continuation of the suspension and the extremely limited scope of the TOFC pricing experiment, the Railroads between the East and the Southwest had no TOFC rates in effect as low as or approaching the level of the reduced Sea-Land rates and as a consequence were handling little or no traffic in TOFC service between the East and the Southwest.

### IX

After extended hearings at which 65 shippers and receivers of freight testified regarding the quality of the several involved services, and at which considerable testimony was submitted

regarding the relative costs of the several transportation agencies in providing their services, briefs were submitted to the Hearing Examiner. He issued four recommended reports and orders dealing with the several dockets in which the Pan-Atlantic and TOFC rates were being considered. After a consideration by one of the divisions of the Commission of

most of the Pan-Atlantic rates, and after the parties had  
227 filed appropriate pleadings with respect to the Examiner's recommendations regarding the TOFC rates, the

entire Commission, with one position being vacant, after hearing oral argument, served the report and order which is Appendix B of this Complaint. In this report five commissioners join in the "majority" opinion. The remaining five commissioners submitted three separate opinions, one of which is designated as "concurring" and another "concurring in part." The third opinion in which three commissioners joined is designated as "dissenting in part." In the majority opinion all of the Sea-Land rates which are found to be compensatory, that is those that exceed out-of-pocket costs, are also found to be just and reasonable. This includes all but a few of the 700 or more Sea-Land rates under investigation. None of the other opinions dispute this determination. But the majority opinion, although finding that the TOFC rates are compensatory, concludes that they have not been shown to be just and reasonable and orders them cancelled, ". . . without prejudice to the filing of new schedules in conformity with the conclusions herein."

The conclusions referred to by the majority are its earlier statements (P. 34, Appendix B) ". . . that the objectives of the national transportation policy require the establishment and maintenance of a differential relationship between the rates under investigation on sea-land and Seatrain Service, on the one hand, and the rates of the rail carriers, on the other . . ." and that the TOFC rates ". . . should be maintained on a level no lower than 6% above Pan-Atlantic's sea-land rates, so long as the latter are not increased above their present levels." The majority opinion which apparently fixes a differential in favor of the Sea-Land rates in the amount of 6% when compared with the Railroads' TOFC rates also appears to compel the Railroads to establish TOFC pricing, not upon the trans-

portation characteristics of that service but rather, upon how Pan-Atlantic elects to price its service.

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## X

In a separate opinion Commissioner Hutchinson states that he is in general agreement with the majority presumably only to the extent that the Sea-Land rates are found lawful and the TOFC rates found unlawful. His basis for a finding of unlawfulness in the case of the TOFC rates is that the cost of providing TOFC service is higher than Sea-Land and therefore the TOFC rates should be maintained on higher levels than the Sea-Land rates. With respect to the prescription of the 6% differential, he states:

"I am not convinced, however, that a differential of 6% is warranted on this record, but since I do not believe the 'without prejudice' finding constitutes an effective prescription of a differential, I concur in the majority decision."

## XI

Commissioner McPherson concurs in the majority report to the extent that it finds the Sea-Land rates reasonable. He, however, would find lawful the TOFC rates which are compensatory and would prescribe no differentials.

## XII

Commissioners Freas, Winchell and Webb dissent from the majorities' conclusion prescribing the 6% differential and hold that the Commission, on the record before it, is without power to prescribe any differential in favor of Sea-Land as compared with TOFC. Further these dissenting Commissioners state that there are no subsidiary findings in the report to substantiate any specific differential.

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## XIII

The Railroads complain that the report and order of the Commission is unlawful for the following reasons:

A. The Commission is without power on the record before it to prescribe or otherwise establish differentials which will com-

pel the Railroads to price their TOFC services in relation to the level which Pan-Atlantic establishes or maintains for its Sea-Land service.

B. The Commission is without power to require the Railroads to cancel their TOFC rates which have been shown to be compensatory and not otherwise unlawful in order to protect Pan-Atlantic's Sea-Land service from effective rail price competition.

C. The Commission, upon the record before it, and upon the findings it has made, is without power to fix any differential in favor of Pan-Atlantic's Sea-Land rates or Seatrain's rates as compared with the rail TOFC rates.

D. The Commission is without power upon the record before it to prescribe or approve differentials between the Pan-Atlantic Sea-Land rates and the rates maintained by the Railroads for their boxcar services.

E. The report and order of the Commission contains conclusions of law which are contrary to the provisions of the Interstate Commerce Act.

F. The report and order of the Commission does not meet the standards required by law in that the conclusions are not supported by adequate findings of facts.

230 G. The report and order of the Commission does not meet the standards required by law in that several of the findings of facts contained therein are without support in the record.

Wherefore, these Plaintiffs respectfully pray:

A. That as provided by 28 U.S.C. §§ 2284, 2321-2325 the Judge of this Court to whom this Complaint is presented, notify the Chief Judge of the Circuit who shall designate two other judges at least one of whom shall be a Circuit Judge to serve with said Judge as members of the Court to hear and determine this action.

B. That upon final hearing of this cause decree be entered permanently enjoining, setting aside and annulling the report and order of the Commission to the extent that it has found unlawful the TOFC rates.

C. That the Plaintiffs have such other and further relief as may be lawful and may be deemed by this Court to be fit and proper.

Respectfully submitted.

(S) THOMAS P. HACKETT,

(S) EUGENE E. HUNT,

(S) CARL HELMETAG, Jr.,

*54 Meadow Street, New Haven, Connecticut,  
Counsel for the Railroads.*

Of Counsel:

ANDREW C. ARMSTRONG.

EDWIN N. BELL.

JAMES A. BISTLINE.

ERNEST D. GRINNELL, Jr.

CLARENCE RAYMOND.

CHARLES P. REYNOLDS.

ALBERT B. RUSS, Jr.

TOLL R. WARE.

231 *[Duly sworn to by Frank J. Orner; jurat omitted in printing.]*

232 *[Certificate of service omitted in printing.]*

233 *Appendix "A" to complaint*

LIST OF PLAINTIFFS

In addition to The New York, New Haven and Hartford Railroad Company, the following Railroads are also Plaintiffs:

Atlantic Coast Line Railroad Company

The Baltimore and Ohio Railroad Company

Chicago, Rock Island and Pacific Railroad Company

The Delaware and Hudson Railroad Corporation

Gulf, Mobile and Ohio Railroad Company

Louisville and Nashville Railroad Company

Missouri Pacific Railroad Company

The New York Central System

The Pennsylvania Railroad Company

Reading Company

Seaboard Air Line Railroad Company

Southern Railway System



St. Louis-San Francisco Railway Company  
 St. Louis, San Francisco and Texas Railway Company  
 Texas and New Orleans Railroad Company

234 [Appendix "B" to complaint omitted in printing.]

239 In United States District Court,  
 District of Connecticut

Civil action No. 8679

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD  
 COMPANY, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE  
 COMMISSION, DEFENDANTS

SEATRAN LINES, INC., INTERVENER

*Order allowing intervention of Seatrain Lines, Inc. as a  
 defendant*

March 6, 1961

The Court having considered the petition of Seatrain Lines, Inc. for leave to intervene as a party defendant in the above-entitled cause, and the Court having considered the answer tendered therewith, and the Court being duly advised in the premises,

It is ordered, that Seatrain Lines, Inc. be, and it hereby is granted leave to intervene in this cause and is granted leave to forthwith file its answer herein, which answer is attached to said intervenor's motion herein.

Dated and entered in the City of New Haven, Connecticut, this . . . . days of February, 1961.

\_\_\_\_\_  
*United States District Judge.*

"Mar. 6, 1961

Granted R. P. Anderson, U.S.D.J."

240. In United States District Court, District of  
Connecticut

*Answer of intervener, Seatrain Lines, Inc.*

Filed March 6, 1961

FIRST DEFENSE

[File endorsement omitted.]

[Title omitted.]

1. Admits the allegations contained in paragraphs I, II and III.

2. With respect to paragraph IV of the complaint, alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the fifth sentence thereof, and the allegation of the eleventh sentence that Pan Atlantic's containers are "easily detached"; denies the allegation of the sixth sentence that "this type of operation was standard in the coastwise" trade; denies the allegations contained in the ninth, thirteenth, fifteenth, and sixteenth sentences thereof; and otherwise admits the allegations contained in paragraph IV of the complaint.

241 3. With respect to paragraph V of the complaint, denies the allegations contained in the first, second and third sentences thereof, alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the fourth sentence thereof, and otherwise admits the allegations contained in paragraph V of the complaint, except alleges that some of the Pan Atlantic rates referred to have been cancelled.

4. With respect to paragraph VI of the complaint, alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first, second, third, ninth, tenth, and thirteenth sentences thereof; except admits that "TOFC service has many of the quality features offered by motor carriers;" denies the allegations of the fourteenth sentence and the first four words of the fifteenth sentence thereof; and otherwise admits the allegations contained in paragraph VI of the complaint.

5. Denies each and every allegation contained in paragraph VII of the complaint, except admits the TOFC rates were published on a parity with the Sea-Land rates between the same points and that the remainder of the TOFC rates between the East and Southwest were not reduced.

6. With respect to paragraph VIII of the complaint, denies the last two sentences thereof, and otherwise admits the allegations contained in paragraph VIII of the complaint.

242 7. With respect to paragraph IX of the complaint, denies the last sentence thereof and respectfully refers the Court to the reports and orders referred to for their content.

8. With respect to paragraphs X, XI and XII of the complaint, respectfully refers the Court to the opinions referred to for their content.

9. Denies each and every allegation contained in paragraph XIII of the complaint.

#### SECOND DEFENSE

The complaint fails to state a claim upon which relief can be granted.

Wherefore, Intervener Seatrain Lines, Inc. demands judgment against plaintiffs dismissing the complaint herein, and for its costs.

GUMBART, CORBIN, TYLER &  
COOPER,

By MORRIS TYLER

*205 Church Street, New Haven, Connecticut,*

*Attorneys for Seatrain Lines, Inc., Intervener.*

Of Counsel:

CHADBOURNE, PARKE, WHITESIDE & WOLFF,

JAMES K. CRIMMINS,

ALAN S. KULLER,

*25 Broadway, New York 4, N.Y.*

243 [Certificate of service omitted in printing.]

244 In United States District Court, District of  
Connecticut

*Order granting motion permitting additional railroads to be  
included as parties plaintiff*

April 3, 1961

[File endorsement omitted.]

[Title omitted.]

On this 3rd day of April, 1961, the motion of The Atchison, Topeka & Santa Fe Railway System; Boston and Maine Railroad; The Central Railroad Company of New Jersey; Erie-Lackawanna Railroad Company; Fort Worth and Denver Railway Company; Kansas City Southern Railway Company; Missouri-Kansas-Texas Railroad Company; St. Louis Southwestern Railway Company, and The Texas and Pacific Railway Company, to be included as additional parties plaintiff is granted.

By order of

ROBERT P. ANDERSON, J.

245 In United States District Court,  
District of Connecticut

*Joint answer of the United States of America and the  
Interstate Commerce Commission*

Filed April 1, 1961

[File endorsement omitted.]

[Title omitted.]

Now come the United States of America and the Interstate Commerce Commission, defendants, and in answer to the Complaint:

I

Admit the allegations contained in paragraphs I through III.

II

Answering the allegations contained in paragraph IV, admit those allegations which describe in general terms the origin and

operation of Sea-Land service, but for an accurate description of the Commission's findings on these matters respectfully refer the Court to the Commission's report. For further answer to this paragraph, deny the allegations that the break-bulk service was unduly expensive to Pan-Atlantic's customers; that the Sea-Land service, from the standpoint of its transportation characteristics, is virtually the same as that offered by the interstate motor carriers, and that Pan-Atlantic is in a position to offer this Sea-Land service "to customers located throughout a vast hinterland emanating from the port cities." For lack of knowledge, neither admit nor deny the allegations contained in the sixth sentence.

### III

Answering the allegations contained in paragraph V, admit that Pan-Atlantic proposed rates for this Sea-Land service which were lower than the rail rates in varying percentages as described in the Commission's report; that the railroads petitioned the Commission to suspend these rates; that in some instances the rates were suspended and in other instances they were permitted to become effective immediately; that the report of the Commission deals with these reduced rates; and that, except for those that have been cancelled, they are now in effect, since the suspension period has expired. The remaining allegations of this paragraph are argumentative or conjectural and do not call for an answer.

### IV

Answering the allegations contained in paragraph VI, admit the allegations which describe in general terms the origin and operation of the trailer-on-flatcar service, but respectfully refer the Court to the Commission's report for an accurate description of the Commission's findings on these matters and for the differences in rates between TOFC and Sea-Land service. Deny the allegations that Sea-Land service is of "virtually identical quality" with the railroad TOFC service; and that the record before the Commission shows that "usually two trailers are placed on one car" in the railroad TOFC service.

## V

Answering the allegations contained in paragraph VII, admit the allegations that the railroads reduced certain of their TOFC rates, but respectfully refer the Court to the report of the Commission for a description of these reduced rates. The

247 remaining allegations of this paragraph are either argumentative and do not require an answer, or involve the motives which prompted certain railroad action, or refer to alleged facts which are not within the knowledge of the defendants and therefore cannot be answered for lack of knowledge.

## VI

Answering the allegations contained in paragraph VIII, admit that Pan-Atlantic petitioned to have the TOFC rates suspended; that like petitions were filed by Seatrain Lines and the motor carriers; that the rates were suspended and placed under investigation by the Commission; and that these rates have never become effective, the railroads having agreed to the continuation of the suspension pending the Commission's consideration of their lawfulness. For lack of knowledge, the defendants neither admit nor deny the allegations as to the motives which prompted the railroads to agree to the suspension and as to the amount of the traffic now being handled in TOFC service between the East and the Southwest.

## VII

Answering the allegations contained in paragraph IX, admit the allegations describing in general terms the course of the administrative proceedings, but respectfully refer the Court to the Commission's report and order for a complete and accurate statement of the Commission's holding.

## VIII

Answering the allegations contained in paragraph X, admit that Commissioner Hutchinson filed a separate concurring opinion, but respectfully refer the Court to the Commission's re-



port for a complete and accurate statement of the Commissioner's views.

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## IX

Answering the allegations contained in paragraph XI, admit that Commissioner McPherson concurred in the Commission's report in part only, but respectfully refer the Court to the Commission's report for a complete and accurate statement of the Commissioner's views.

## X

Answering the allegations contained in paragraph XII, admit that Commissioners Freas, Winchell and Webb filed a statement in which they dissented in part from the Commission's report, but respectfully refer the Court to the Commission's report for a complete and accurate statement of the views of these Commissioners.

## XI

Deny the allegations contained in paragraph XIII.

## XII

For further answer to the allegations of the Complaint, the defendants aver that the Commission's report and order are valid and lawful in all respects.

## XIII

Except as herein expressly admitted, the defendants deny each and every allegation contained in the Complaint.

Wherefore, the United States of America and the Interstate Commerce Commission pray that the relief sought for in the

Complaint be denied, and the Complaint be dismissed, plaintiffs to pay the costs.

LEE LOEVINGER,  
Assistant Attorney General,  
HARRY W. HULTGREN, Jr.,  
United States Attorney,

(S) JOHN H. D. WIGGER,  
Attorney,  
Department of Justice,  
Washington 25, D.C.,  
Attorneys for the United States of America.

ROBERT W. GINNANE,  
General Counsel,

(S) B. FRANKLIN TAYLOR, Jr.,  
Associate General Counsel, Interstate Commerce  
Commission, Washington 25, D.C.,  
Attorneys for the Interstate Commerce Commission.

249 [Certificate of service omitted in printing.]

250 In United States District Court of  
Connecticut

Order granting motion permitting Sea-Land Service, Inc.  
(formerly known as Pan-Atlantic Steamship Corporation),  
to intervene as party defendant

[File endorsement omitted.]

April 17, 1961

[Title omitted.]

On this 17th day of April, 1961, the motion of Sea-Land Service, Inc. (formerly known as Pan-Atlantic Steamship Corporation) to intervene as party defendant is granted.

By order of

WM. H. TIMBERS, U.S.D.J.

"4/17/61

Granted (Having obtained Judge Hincks' approval this date)

WHT

USDJ"

251 In United States District Court, District of  
Connecticut

*Answer of Intervening Defendant, Sea-Land Service, Inc.*

Filed April 17, 1961

[File endorsement omitted.]

[Title omitted.]

Comes now Sea-Land Service, Inc., formerly known as Pan-Atlantic Steamship Corporation, and which will be referred to hereinafter as Pan-Atlantic, and for its answer to the complaint filed in the above-entitled proceeding respectfully shows:

I

Answering Paragraphs I, II and III of the complaint, the intervening defendant admits the material allegations contained therein.

II

Answering Paragraph IV of the complaint, intervenor admits that the break-bulk type of water carrier service in which it engaged prior to 1957 was costly to operate, due to the multiple handlings of cargo, but denies that its break-bulk type operation was "unduly expensive \* \* \* to its customers", as alleged by plaintiffs. Although the  
252 containership service inaugurated by intervenor in 1957 resulted in substantial reductions in its operating costs, as found by the Commission in its report that is placed in issue by plaintiffs (Complaint, Appendix B, Page 27), the inauguration of the containership service did not reduce the transportation costs of shippers or receivers of freight via intervenor's service.

Intervenor denies the allegations of plaintiffs that service disabilities inhere in the Seatrain and railroad boxcar services vis-a-vis the Pan-Atlantic motor-and-water service.

Intervenor denies the allegation of plaintiffs that its service "from the standpoint of its transportation characteristics, is virtually the same as that offered by the interstate motor carriers." As the record before the Commission shows, the

motor-and-water service provided by intervenor is subject to the disabilities inherent in all water carrier services, these disabilities including relatively slow transit time, uncertainty due to the perils of the sea, relative infrequency of service (i.e., one sailing per week versus one or more services per day via overland carriers) and unavailability of line-haul stop-off privileges. Although, as stated by plaintiffs, service can be provided by Pan-Atlantic to shippers or consignees regardless of whether or not they are located on or near a railroad, as the record before the Commission shows and as the Commission found, 77 percent of the shippers or consignees utilizing the service of intervenor are located on railroad sidings (Complaint, App. B, Pg. 8) and it would not be feasible or practical to provide different rates for shippers who are not located on railroad sidings.

253 Intervenor denies the allegation of plaintiffs that intervenor is in a position to offer its service not only to shippers and consignees in the port cities at which it calls "but to customers located throughout a vast hinterland emanating from the port cities." Intervenor avers that although in previous years it was able to provide a service to and from inland points many miles from the ports of call, at present its operations are confined to a relatively small area outside of the port cities, due largely to the destructively competitive practices and competitive rate reductions that have been effected by the plaintiff railroads.

### III

Answering Paragraph V of the complaint, intervenor avers that plaintiffs have at all times been fully aware of the aforesaid service disabilities of the Pan-Atlantic sea-land service and that in petitioning the Commission to suspend the proposed Pan-Atlantic rates plaintiffs were motivated by a desire to prevent intervenor from participating in any of the affected traffic and not by a belief that intervenor "was in fact, quality-wise, the equal of motor carrier service." Intervenor further avers that the pricing proposed by the intervenor contemplated the publication of motor-water-motor rates generally 5 and 7½ percent under all-rail rates and not "5 to 10 percent" as alleged

by plaintiffs. Intervenor avers further that freight rates via water-and-motor transportation routes have traditionally been substantially lower than rates maintained via all-rail routes, due to the disabilities of the water-and-motor routes, aforesaid. Intervenor avers further that the rates published by intervenor referred to in the complaint are higher with  
 254 relation to all-rail rates than were the rates formerly maintained in intervenor's break-bulk service.

#### IV

Answering Paragraph VI of the complaint, intervenor admits the averment of plaintiffs that their trailer-on-flat-car services are equivalent in quality to the over-the-road motor carrier services and that the railroad TOFC rates are generally on the level of motor common carrier rates and generally higher than the rail boxcar rates. However, intervenor avers that in order to prevent the intervenor from participating in the movement of the considered traffic, the plaintiff railroads have attempted to reduce their TOFC rates substantially below their present levels and to exactly the same level as applied in connection with the inferior water and motor carrier service provided by the intervenor. Intervenor denies that its container-ship service is "of virtually identical quality" with the railroad TOFC service, and avers that intervenor's service has inherent disabilities and disadvantages to shippers, including those referred to in Paragraph II hereof. Intervenor denies that the record before the Commission shows that "Usually two trailers are placed on one car" in the railroad TOFC service.

#### V

Answering Paragraphs VII and VIII of the complaint, intervenor avers that irrespective of the bona fides of the plaintiff railroads when the TOFC rates at issue were published, subsequent developments, including the testimony of many shipper witnesses in the Commission proceedings, have now made it apparent that reductions in TOFC rates to the  
 255 level of intervenor's rates is unnecessary to permit railroad participation in the traffic; that to the contrary, the application of such parity rates would without question

divert all of the traffic from intervenor Pan-Atlantic. The Commission found, based upon a full and complete record, that intervenor Pan-Atlantic in order to attract traffic must maintain rates differentially lower than those maintained in railroad services, especially TOFC services (Complaint, App. B, pg. 28) and ordered the plaintiff railroads not to reduce their TOFC rates to a level lower than 6 percent higher than the present Pan-Atlantic rates, although it was the contention of intervenor that it would be unable to participate in the movement of traffic in competition with rail TOFC unless its rates were at least 10 percent lower than rail TOFC rates. The averment by plaintiffs that they are not now handling TOFC traffic in competition with intervenor is without significance in view of the fact that their present TOFC rates are substantially in excess of 6 percent higher than the present Pan-Atlantic rates.

## VI

Answering Paragraph IX of the complaint, intervenor submits that the report and order of the Commission referred to therein will speak for themselves. Intervenor denies the allegation that the majority opinion of the Commission fixes a differential in favor of the Pan-Atlantic rates irrespective of the level of the said Pan-Atlantic rates. To the contrary, the majority opinion specifically provides only for a rail TOFC differential above the Pan-Atlantic rates so long as the latter are not increased above their present levels.



## VII

Answering Paragraphs X, XI and XII of the complaint, intervenor avers that the separate opinions of the individual commissioners referred to, as set forth in Appendix B to the complaint, will speak for themselves.

## VIII

Answering Paragraph XIII of the complaint, intervenor denies the allegation in Subparagraphs A, C and D that the Commission is without power on the record before it to prescribe or otherwise establish differentials with respect to the railroad and Pan-Atlantic rates at issue. Intervenor further denies the allegation in Subparagraph B that the Commission is without power in the circumstances to require the railroads to cancel their TOFC rates at issue, even though they may have been shown to be compensatory and not otherwise unlawful, and further denies that the railroad TOFC rates at issue have in fact been shown to be compensatory and not otherwise unlawful. It denies all of the allegations in Subparagraphs E, F and G. It avers further that the allegation in Subparagraph G is vague and uncertain in that the "findings of fact" referred to therein are not identified.

## IX

Further answering the complaint, intervenor avers that the Commission has ample power, as well as a statutory responsibility, under the Interstate Commerce Act, including the national transportation policy contained therein, to order the plaintiff railroads to desist from their competitively destructive freight rate practices which, unless restrained, will force

257 intervenor to discontinue its service; and that the Commission has ample power, as well as a statutory responsibility, to require the plaintiff railroads to maintain reasonable freight rates at levels that will permit participation in the competitive traffic by the intervenor as well as by plaintiffs, and at levels that will permit both to conduct economically sound operations.

## X

Except as herein expressly admitted, intervening defendant denies each and all of the allegations contained in the complaint.

Wherefore, intervening defendant prays that the complaint in this action be dismissed.

[S] ALBERT W. CRETELLA,

*153 Court Street,*

*New Haven 10, Connecticut,*

[S] WILLIAM H. ARMBRECHT, Jr.,

*Merchants National Bank Building,*

*Mobile, Alabama,*

[S] WARREN PRICE, JR.,

*1639 Investment Building,*

*Washington 5, D.C.,*

*Attorneys for Intervening Defendant.*

258 In United States District Court, District of  
Connecticut

Civil Action No. 8679

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COM-  
PANY, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE  
COMMISSION, DEFENDANTS

SEA-LAND SERVICE, INC., AND SEATRAN LINES, INC.,  
DEFENDANTS-INTERVENORS

*Opinion*

November 15, 1961

Before: HINCKS, Circuit Judge, and ANDERSON and TIMBERS,  
District Judges

[File endorsement omitted.]

Action by plaintiffs-railroads, brought under 49 U.S.C. § 17(9); 28 U.S.C. §§ 1336, 1398, 2284 and 2321-2325; and 5 U.S.C. § 1009, to enjoin, annul and set aside an order of the

Interstate Commerce Commission, 313 I.C.C. 23, directing the cancellation of plaintiff's proposed reduced trailer-on-flat-car (TOFC) rates on various commodities.

Carl Helmetag, Jr., Philadelphia, Pa. (Thomas P. Hackett, and Eugene E. Hunt, New Haven, Conn., Andrew C. Armstrong, Edwin N. Bell, Houston, Texas, James A. Bistline, Washington, D.C., Ernest D. Grinnell, Jr., St. Louis, Mo., J. Edgar McDonald, New York City, Clarence Raymond, Louisville, Ky., Charles P. Reynolds, Norfolk, Va., Albert B. Russ, Jr., Jacksonville, Fla., and Toll R. Ware, St. Louis, Mo., of counsel), for plaintiffs.

259

B. Franklin Taylor, Jr., Associate Gen. Counsel, Interstate Commerce Commission, Washington, D.C.

Richard H. Stern, Atty., Dept. of Justice, Washington, D.C. (Lee Loevinger, Asst. Atty. Gen., Dept. of Justice, Washington, D.C., Harry W. Hultgren, U.S. Atty., D. Conn., Hartford, Conn., and Robert W. Ginnane, Gen. Counsel, I.C.C., Washington, D.C., of counsel), for defendants.

Warren Price, Jr., Washington, D.C. (Albert W. Cretella, New Haven, Conn., and William H. Ambrecht, Jr., Mobile, Ala., of counsel), for defendant-intervenor Sea-Land Service, Inc.

Ralph D. Ray, New York City (Morris Tyler, Gumbart, Corbin, Tyler & Cooper, New Haven, Conn., Chadbourne, Parke, Whiteside & Wolff, Alan S. Kuller, and Charles J. Prentiss, New York City, of counsel), for defendant-intervenor Seatrain Lines, Inc.

260 HINCKS, *Circuit Judge*:

This is an action brought by several railroads to enjoin an order of the Interstate Commerce Commission, entered pursuant to a report <sup>1</sup> published in 313 I.C.C. 23, directing them

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<sup>1</sup> References in this opinion to the report will employ the pagination of 313 I.C.C., thus: "R. 1 (2, 3, etc.)."

to cancel substantial rate reductions for 66 listed movements of their trailer-on-flat-car (TOFC) service between points in the East and Texas. Two water carriers, Sea-Land Service, Inc. (hereinafter referred to as Sea-Land), and Seatrain Lines, Inc. (hereinafter Seatrain), protested the proposed rates and appeared herein to defend the order below. The United States and the Interstate Commerce Commission also appeared herein and defended the order. They will be referred to collectively as "the government."

Sea-Land, known in the proceedings before the Commission by its former name Pan-Atlantic Steamship Corporation, in 1957 had suspended its domestic break-bulk freight service, theretofore operated between eastern ports and Southern Atlantic and Gulf ports. It substituted four "trailer-ships," each of a capacity to carry 226 standard, demountable, truck trailer-bodies, and each equipped with cranes capable of lifting the loaded trailers from their chassis on the pier, stowing them aboard, unopened, into cooperating slots and, at the ports of destination, lifting them onto trailer-chassis on the pier. By this improved highway-water-highway "fishy-back" service, Sea-Land offered a door-to-door service to all shippers and consignees accessible by highway in containers locked or unopened between the point of origin and destination. The conversion from break-bulk service to the "fishy-back" service just described enabled Sea-Land to improve the quality of its service and reduce operating costs at rates which, prior to 1957, were five to ten per cent below the rail boxcar rates.

Seatrain offers rail-water-rail service whereby loaded railroad cars are taken aboard its three steamships at Edgewater,

New Jersey and after carriage by sea to a destination in a southern coast or a Gulf port are then carried by a railroad for delivery to the consignee. Seatrain contemplates a modification of this service, a so-called "seamobile service," whereby the freight will be carried in special containers which may be readily transferred from highway trailers or railcars to and from its seagoing vessels. Like railroad boxcar service, the present Seatrain service permits carriage from shipper to consignee without breaking bulk only when shipper and consignee are located on railroad sidings.

To compete with these services and especially that of Sea-Land which is available to shippers and consignees without rail access, the railroads considerably extended their "piggy-back," highway-rail-highway service, whereby trailer-bodies, without detachment from their chassis, are hauled onto and tied down upon railroad flatcars, one or two to each flatcar, and at the rail destination are hauled by tractors to the consignees' doors. Prior to 1957 the rates set for this TOFC service were generally on a parity with those in force for regulated motor-carrier service and somewhat higher than the rail boxcar rates. But to make their competition with Sea-Land's fishy-back service more successful, the railroads in 1957 filed rate schedules for their TOFC service which were substantially on a parity with Sea-Land and Seatrain rates, R. 33, and motor common carrier rates, R. 45. However, these rate schedules, since inaugurated as an experiment, were limited to 66 commodity movements from particular eastern points to Fort Worth and Dallas and return.

On petitions of Sea-Land, Seatrain, a motor-carrier association, the Secretary of Agriculture, and several municipal authorities, the Commission placed all the TOFC rates in this initial, or pilot, schedule under suspension and investigation under I. & S. Docket No. 6834—"Piggy-Back Rates—262 Between East and Texas," which also covered the lawfulness of Sea-Land rates between the same points and certain Seatrain rates. This controversy, together with three others involving the lawfulness of numerous other Sea-Land rates, each under separate docket numbers, I. & S. Docket No. M-10415, I. & S. Docket No. 6906, and I. & S. Docket No. M-11375, came on for hearing before Examiner Morgan who filed a separate report on each. On exceptions by the parties, No. M-10415 was heard by Division 3 of the Commission and on further exceptions by the railroads to the Division 3 report all four docket numbers were consolidated for hearing and dealt with in a consolidated report<sup>2</sup> by the entire Commission.

<sup>2</sup> This report embraced 43 docket proceedings.

The Commission held<sup>3</sup> that the entire schedule of TOFC rates was unlawful and, in the order under attack herein, directed that the rates, which had theretofore been under suspension, be canceled. The cancellation date, however, was ordered suspended, thus leaving the rates in continuing suspension. It was to set aside the cancellation order as to the TOFC schedule that the railroads brought this action. Except for a few specific rates, the Sea-Land and Seatrain rates were found lawful and to this holding no exception had been taken to the Division 3 report.

The Commission's essential findings as enunciated by five of the Commissioners in its report were as follows:

1. The proposed TOFC rates would produce revenues exceeding out-of-pocket costs (see Appendix A *infra*) for all of the proposed movements by TTX flatcars<sup>4</sup> and for all but six of 66 of the listed movements by railroad-owned cars,<sup>5</sup> and exceeding the railroads' fully-distributed costs (see Appendix A) for 43 of the 66 movements by TTX cars and 14 movements by railroad-owned cars. R. 36. Consequently, except for the six rates returning less than *out-of-pocket* costs<sup>6</sup> the TOFC rates were found to be compensatory.<sup>7</sup> The corresponding Sea-Land rates, with one exception, were similarly found to be compensatory, as were the Seatrain rates.

263 2. As to the 66 movements in issue here, Sea-Land costs, both on an out-of-pocket and a fully-distributed

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<sup>3</sup> Its report was adhered to by five Commissioners. Commissioner Hutchinson concurred on the ground that the proposed schedule constituted a destructive competitive practice. Commissioner Frens, in a dissenting report in which Chairman Winchell and Commissioner Webb joined, dissented on the ground that the Interstate Commerce Act as amended neither required nor permitted "blanket protection for the water carriers." Commissioner McPherson, concurring in part, said: "I would approve all the rates which are compensatory but on this record I would not impose any differential." Only ten Commissioners were then in office.

<sup>4</sup> Flatcars on lease by the railroads capable of carrying two trailers.

<sup>5</sup> The conventional railroad-owned cars are generally capable of carrying only one trailer. As the Commission observed, the choice between 1- or 2-trailer cars "would rest entirely with the railroads."

<sup>6</sup> These six rates the railroads withdrew and they are not in issue in this litigation.

<sup>7</sup> The report makes it plain that the Commission considered that rates yielding in excess of out-of-pocket costs were "compensatory."



basis, were lower than TOFC costs except for two (out of the 66) movements accomplished by TTX cars. However, railroad boxcar costs on some of this traffic were lower than Sea-Land costs; on other portions of the traffic, Sea-Land costs were lower. On the record before it the Commission said it "can not determine \* \* \* where the inherent advantages may lie as to any of the rates in issue." \* R. 46.

3. In quality of service, the several modes rated in the following order: TOFC, all-rail boxcar, sea-land and Sea-train. However, "the most important, and usually the determinative, factor to the shippers as a whole is the measure of the rates." \* R. 29.

4. All Sea-Land traffic is competitive with the railroads. But only a fraction of railroad traffic is competitive with Sea-Land. R. 45.

5. The railroads intend, if the proposed TOFC rates attracted profitable traffic, to extend the reductions in TOFC rates to many other movements than the 66 immediately involved herein. R. 47.

6. Sea-Land must recover fully-distributed costs to remain in business. R. 38.

On conclusions thought to follow from these findings, the Commission ordered the proposed TOFC rates cancelled, holding that, "the rail TOFC rates on the commodities from and to the points concerned in I. & S. No. 6834 should be maintained on a level no lower than 6 percent above \* \* \* sea-land rates, so long as the latter are not increased above their present levels." And its order was expressly stated to be "without prejudice to the filing of new schedules *in conformity with the conclusions herein.*" R. 50. [Emphasis supplied.]

We hold that, at least on this record, the requirement of a rate differential to protect the water carriers violated

\* The Commission pointed out that both the TOFC and the Sea-Land service were subject to certain variables not measurable in the record before it.

\* The Commission, after describing the various competing services, concluded that "the preponderance of the testimony on these records is to the effect that most of the shippers prefer rail service to sea-land except at lower rates for the latter." This, obviously, indicates recognition of some quality-of-service superiority in dependability and speed for overland as against water transport. R. 44. See also R. 38-40.



264 the 1958 Amendment to the Interstate Commerce Act, now appearing as 49 U.S.C. § 15(a)(3), which reads as follows:

"In a proceeding involving competition between carriers of different modes of transportation subject to this Act, the Commission, in determining whether a rate is lower than a reasonable minimum rate, shall consider the facts and circumstances attending the movement of the traffic by the carrier or carriers to which the rate is applicable. Rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the national transportation policy declared in this Act."

In disapproving the proposed schedule of the railroads the Commission, contrary to the specific prohibition of the 1958 amendment, is plainly holding up railroad rates "to protect the traffic" of another mode. It argues, however, that the national transportation policy (hereinafter sometimes referred to as NTP),<sup>10</sup> to which it is commanded to give "due consideration" by the same provision, compels this result. The evidence and findings do not support this argument.

The first policy-factor mentioned in the NTP declaration is to "recognize and preserve the inherent advantages of each

<sup>10</sup> The Congressional declaration of the National Transportation Policy was introduced into the Interstate Commerce Act by the Transportation Act of 1940, 54 Stat. 899, and now appears in the United States Code (1958) preceding §§ 1, 301, 901, and 1001 of Title 49:

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages,

or unfair or destructive competitive practices; to cooperate with the  
279 several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

[mode of transportation].” By “the inherent advantages” was meant the ability of a mode of transportation over the long run to provide a transportation service more acceptable to its shippers, by reason of quality or price, than that offered by a competing mode. That the calculation was to be long-run must be emphasized. The shorter-run “out-of-pocket” costs of one mode (e.g., railroads) may be lower than the longer-run “fully-distributed,” or even the shorter-run costs of competing modes (e.g., water carriers) whose long-run costs are lower. When they are, rates set by reference to out-of-pocket costs may favor what in the long run is the less efficient, higher-cost mode. Thus the “inherent advantages” of lower cost (or better service, which is discounted for price) refers to the long-run, or fully-distributed, costs of carriage.<sup>10a</sup> It was  
 265 thought undesirable that one mode should undercut the rates of a competing lower-cost mode. Such conduct savored of a predatory competitive practice. See *Dixie Carriers v. United States*, 351 U.S. 56, 59, and n. 5 (1956). And generally it was possible to destroy a lower-cost carrier or mode only by reducing rates, at least temporarily, to a level below the costs of either. It well may be that for the higher-cost

<sup>10a</sup> See *Dixie Carriers v. United States*, 351 U.S. 56, 59 (1956) (“lower cost of equipment, operation, and therefore service”); Congress’ fear was lowering of rates by “strong” carriers, putting more efficient carriers out of business, citing 84 Cong. Rec. 5874; Statements of Chairman Freas before the Senate Committee on Interstate and Foreign Commerce, Hearings on S. 3778, 85th Cong., 2d Sess. (1958) (“In many instances, however, the full cost of the low-cost form of transportation exceeds the out-of-pocket cost of another. If, then, we are required to accept the rates of the high cost carrier merely because they exceed its out-of-pocket costs, we see no way of preserving the inherent advantages of the low cost carrier.”); Colloquy between Senators Kefauver and Smathers, 104 Cong. Rec. 10859 (1958) (“Mr. Kefauver: . . . Some people have expressed the belief that under-[15(a)(3)] it would be possible for one type of carrier to lower its rate to such an extent that another carrier would not be able to compete fairly on the basis of charging the overhead to that other carrier. There is nothing in [15(a)(3)], is there, which would enable one carrier to take undue advantage of another carrier . . .?” “Mr. Smathers: No. The answer is no.”)

It will be observed that Congress had very different ideas as to what out-of-pocket and fully-distributed costs are than did the Commission. If Congress had realized that “railroad operating expenses include virtually all important railroad costs except property taxes and interest payments,” see Appendix A, *infra*, it might have acted differently. But that, of course, is not a matter for our decision.

mode to jeopardize the continued existence of a lower-cost mode by setting rates below the costs of each, could be characterized as a "destructive competitive practice" which under another NTP policy-factor was not to infect the "reasonable charges for transportation services" which the Commission was authorized to approve. But that is not this case, as we will now proceed to show.

The Commission in its report expressly admitted (R. 46) that, "we can not determine on these records where the inherent advantages may lie as to any of the rates in issue." It thus made it plain that it did not rest its holding on the "inherent advantages" factor of the NTP. Instead, it turned to another NTP factor to justify its decision. It said, at R. 44, the "TOFC rates here under investigation, with the few exceptions noted, appear to be compensatory. Many of these are above the fully-distributed costs shown, and with the exceptions mentioned, all are above out-of-pocket costs. The next, and the most important, question is whether these rates constitute destructive competition." [Emphasis supplied.] And that the Commission did, at least in part, base its decision upon a holding that the proposed TOFC rates were an "unfair or destructive competitive practice" such as it thought frowned upon by the NTP, is demonstrated by its statement that: "The reduced rates of the railroads here under consideration are an initial step in an overall program of rate reductions that can fairly be said to threaten the continued operation, and thus the continued existence, of the coastwise water-carrier industry generally." R. 47. Apparently the Commission thought that any rate-competition which threatens the continued existence of a competitor it had power to prevent as a "destructive competitive practice," irrespective of whether the challenged rates were compensatory to the proponent thereof or whether the mode of the contesting competitor was a lower-cost mode than that of the proponent.<sup>11</sup> This, we hold, was an erroneous interpretation of the Act, as amended.

<sup>11</sup> That the Commission considered itself vested with a power of such sweeping breadth is further demonstrated by its stated conclusion herein (R. 50) that the water carriers must be favored by a differential under railroad boxcar rates, albeit a somewhat smaller differential than the 6% differential required of TOFC rates. Yet as to boxcar costs the Commission

267 Even before 1958, it would have been erroneous to hold that irrespective of other factors rates were unlawful merely because they would destroy carriers operating under different modes of transportation. In *Schaffer Trans. Co. v. United States*, 355 U.S. 83, 91 (1957), it was said that "[t]he ability of one mode of transportation to operate with a rate lower than competing types of transportation is precisely the sort of 'inherent advantage' that the congressional policy requires the Commission to recognize."

Prior to 1958, the Commission's emphasis as between different factors of the NTP had vacillated; now allowing rate reductions to "recognize and preserve \* \* \* inherent advantages," see *New Automobiles in Interstate Commerce*, 259 I.C.C. 475, and later shifting its stress to "coordinating \* \* \* a national transportation system" even at the cost of stifling competition, as in *A. W. Schaffer Extension—Granite*, 63 M.C.C. 247, rev'd sub. nom. *Schaffer Trans. Co. v. United States*, *supra*.

Against this background of vacillation, the Transportation Act of 1958 was adopted. We think that, on the whole, the amendment of Section 15(a) was intended to provide freer play for competition as between different modes while still continuing protection to the modes having the inherent advantage of low cost from unfair or destructive competitive practices. In this the Congressional history, while perhaps not conclusive, bears us out. In H.R. Rep. No. 1927, 85th Cong., 2d Sess. (1958), 2 U.S.C.C.A. 3470 (1958), it had been said: "\* \* \* The Interstate Commerce Commission has not been consistent in the past in allowing one or another of the several modes of transportation to assert their inherent advantages in the making of rates." This House Report on § 15(a)(3) in its final form said, further: "The effect of this amendment will be to encourage competition between the different modes of transportation for the benefit of the shipping public."

268 It quoted with approval the above excerpt from the opinion in *Schaffer Trans. Co. v. United States*, *supra*.

had found only that on some of this traffic Sea-Land "is shown as the low-cost agency; on the other traffic, the railroads' costs appear to be lower." R. 40. This surely falls far short of a finding that Sea-Land's is the low-cost mode.

The report of the Senate Committee of June 3, 1958 (S. Rep. No. 1647, 85th Cong., 2d Sess.) said of § 15(a)(3) in its final form,

"The committee wishes further to emphasize that the amendment in regard to section 5 amending section 15a of the act as framed by the committee is *designed to encourage competition* in transportation by allowing each form of transportation subject to the Interstate Commerce Act full opportunity to make rates reflecting the inherent advantages each has to offer, with such ratemaking being regulated by the Interstate Commerce Commission, however, to prevent 'unfair or destructive competitive practices' as contemplated by the declaration of national transportation policy. Under the committee amendment *the principal emphasis*, but not the exclusive emphasis, in a competitive ratemaking proceeding involving different modes of transportation *will be on the conditions surrounding the movement of the traffic by the mode to which the rate applies.*" [Emphasis supplied.]

Having in mind that by the 1938 amendment Congress for the first time articulated an express, though qualified, prohibition against holding up the rates of one mode to protect another, a prohibition accompanied by a direction that consideration shall be given to the effect of rates on the carrier for whom they are prescribed, we are unable to accept the contention in the government's brief that "section 15(a)(3) brought about no fundamental change in the law." We think that Congress in adopting the 1958 amendment, which its committees thought would encourage competition, did not intend the included prohibition of compulsory rate differentials to be nullified merely because of the adverse effect of rate competition on another mode of transportation even if carried to the point of rendering one mode of transportation obsolete and hence unable to survive. Instead, we think, the differential-

269 prohibition was intended to be qualified only when factors other than the normal incidents of fair competition intervened, such as a practice which would destroy a competing mode of transportation by setting rates so low as to be hurtful to the proponent as well as his competitor or so low as to deprive the competitor of the "inherent advantage" of being the

low-cost carrier. The "inherent advantage" factor and the "destructive competitive practice" factor were the only two policy factors mentioned in the committee reports. We think the reference to the NTP in § 15(a)(3) indicates an intent that the differential prohibition was to be qualified only when necessary because of the interplay of these two factors.

We cannot help wondering if the Commission's obvious reluctance to accept as critical the relative costs of service by the competing modes of transportation may not be attributable less to its interpretation of the applicable law than to its fear that the process which it has developed of so-called value-of-service ratemaking will be jeopardized if it be required to make critical findings as to the comparative costs of competing modes of transportation.

Value-of-service ratemaking is a price-discrimination device, used either to maximize profit or to subsidize certain interests. As a maximizing tool, it can be used by a monopolist in the following way. M has a product—transportation—with two potential buyers, A and B. A uses it to ship industrial sand which he sells for \$10 a ton, B to ship coal which he sells for \$35 a ton; M's cost of shipment is the same for both. If he sets a uniform rate per ton of \$2, B will ship but A will not—he will not be able to meet his competition at the market. If M sets his price at a uniform \$1 per ton, both will ship—but M will lose a greater revenue which he could have garnered from

B. And if M's out-of-pocket cost of carriage is \$0.75 per ton, he will want A's \$1 traffic. Early railroads thus developed the practice of charging \$2 to B and \$1 to A, cost of carriage notwithstanding.

This value-of-service pricing is not necessarily unsound economically. Economists generally agree that:

"Preferential rates relieve rather than burden other traffic if two conditions are fulfilled. These are (1) that the rate must more than cover the direct costs; and (2) that the traffic will not move at higher rates."<sup>12</sup>

And the I.C.C., partly because this was the rate pattern prevailing when the Commission was established, and partly to

<sup>12</sup> Locklin, *Economics of Transportation* 158 (1954).



maximize utilization of the railroads, adopted value-of-service as its own criterion of ratemaking.

The Commission, however, added factors of discrimination other than profit maximization. One of these is subsidization of certain commodities producers, perhaps under political pressures. Thus corn is carried at 85 per cent of out-of-pocket costs; beets at 57 per cent; gravel and sand at 88 per cent; logs at 62 per cent. And of course, passenger traffic has been carried at a loss for some time. These losses are made up on other traffic, such as gasoline, 135 per cent; equipment parts, 236 per cent; and metal alloys, 264 per cent.<sup>13</sup> Other discriminations sometimes introduced by the I.C.C. are attributable to its desire to act as an economic planner, see, e.g., *Anchor Coal Co. v. United States*, 25 F. 2d 462, 470 (1928).

These official discriminations, hallowed and encrusted by time and inertia, now pervade the rate structure; indeed they are the rate structure. The rates on high-value commodities are thus twice subject to arbitrary boosting. First, they bear as part of their "cost" the subsidies extended to traffic which does not pay the out-of-pocket cost of its carriage. And second, high-value commodities are expected to yield for the carriers a profit above their fully-distributed costs sufficient to compensate for any deficiency in the fully-distributed costs of other traffic.

271 This disquisition may help to an understanding of what the I.C.C. attempted and did in this controversy. It serves to point out that "cost" as used by the I.C.C. is a term of art. "Fully-distributed costs" of operation are actually the I.C.C.'s estimate of returns necessary to continued profitable operation. "Fully-distributed cost" of a given service is a largely arbitrary estimate of the proportion of system "costs" which the I.C.C. feels a given service should contribute to total revenue. For example, under the Commission's scheme of ratemaking the "fully-distributed cost" of the TOFC freight service is set at a level high enough to absorb, in addition to

<sup>13</sup> These figures are from ICC, Bureau of Accounts & Cost Findings, *Distribution of Rail Revenue Contribution by Commodity Groups—1952*, Table 12 (1955).



direct freight expenditures, the TOFC "share" of the eastern railroads' passenger-operations deficit. See Appendix A.

Thus the Commission was inhibited, by the terms of its own analysis, from a meaningful comparison of TOFC's cost to Sea-Land's cost. The "costs" of TOFC for these 66 movements were the sum of the following components: direct TOFC costs, a judgment of the appropriate shares of subsidy owed by TOFC to other railroad traffic, and an estimate of what contribution to total railroad revenue the high-value commodities here involved should make. Except for the application of value-of-service criteria Sea-Land "costs" were not complicated by these extrinsic factors. In short, under the Commission's scheme, TOFC costs and Sea-Land costs were incommensurate quantities.

But this lack of real significance in its cost comparisons is almost academic when set against the Commission's method of decision. That process, as nearly as we can trace it, was as follows. First, Sea-Land's overall revenue needs were calculated by the process outlined in Appendix A. Value-of-service criteria were then applied to determine the share of its needs to be met by the commodities in question. From 272 this figure was derived the "fully-distributed cost" of Sea-Land's carriage of these items. The railroads, in effect, were then ordered to leave the traffic with Sea-Land by maintaining their rates at a 6 per cent differential. This conclusion was bolstered by a recital of TOFC "costs" computed as we have seen on an essentially different basis. The effect was to obscure, rather than illuminate, the identification of the "low-cost" mode.

If, instead of cancellation, the disposition of the proposed rates had been one of approval, and forced Sea-Land to reduce its own rates on the commodities involved, it is true that the substantial extra margin of profit the Sea-Land rates provide for the company as a whole, which is available to augment the lower profits from the revenues of low-value movements, would have been reduced. This, we think, is what the Commission meant when it said: "The reduced rates of the railroads here under consideration are an initial step in an overall program of rate reductions that can fairly be said to threaten the con-

tinued operation, and thus the continued existence, of the coastwise water-carrier industry generally." R. 47. Apparently, the Commission thought that any competition having such effect on water carriers, i.e., to reduce rates on high-value commodities, was necessarily "an unfair or destructive competitive practice" within the meaning of the statutory declaration of the NTP.

Such an interpretation of the Commission's decision might avoid some of the difficulties we find with that order; for example, it would explain why the Commission refused to allow TOFC rates to be lowered to a level still above the railroad's fully-distributed costs. But if the Commission decision does represent such an attempt to preserve its value-of-service ratemaking structure, the decision must fall for lack of evidence and necessary findings. For the Commission would  
 273 have been warranted in holding up the TOFC rates for these 66 movements to protect an *integral overall rate structure* for Sea-Land only on evidence and findings that, notwithstanding the § 15(a)(3) prohibition of differentials, the *integral overall rate structure* was required by one or more of the policy-factors enumerated in the NTP, and particularly the policy to protect the "inherent advantages" of the overall structure against "destructive competitive practices" and "the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service." Sec. 15(a)(2).

There was no finding here that the *overall rate structure* of Sea-Land which the Commission sought to preserve was that of the *overall low-cost mode*. This finding the Commission refused to make; indeed it could not, for as it said, "we do not have before us the rail costs as to many of these rates \* \* \* we can not determine on these records where the inherent advantages may lie as to any of the rates in issue." True, it found that as to many of the 66 movements in question, Sea-Land was a lower-cost mode than TOFC; but it did not find that Sea-Land service was in general a lower-cost mode than railroad service in general. All-rail boxcar service, as well as TOFC, competes with Sea-Land, and as to many boxcar rates the Commission's finding was, "the railroads' costs appear to

be lower." R. 46. Yet the Commission concluded that Sea-Land was entitled to protection against boxcar competition, as well as TOFC competition, though by a differential "somewhat lower" than the 6% prescribed for TOFC. R. 50. See also I.C.C. I. & S. Docket No. 7454 (May 18, 1961). We conclude that, for lack of evidence and findings that Sea-Land was in general the low-cost mode, the action of the Commission, in so far as it sought to protect Sea-Land's overall rate structure, was an unlawful interference with the forces of competition fostered—not proscribed—by § 15(a)(3).

274 For its disregard of the differential-prohibition the

Commission also places reliance on the "national defense" clause of the NTP. In this too, we think the Commission misinterpreted the law. True, the hoped-for "end" of the National Transportation Policy is a system "adequate to meet the needs \* \* \* of the national defense." But the national defense is not stated as an operative policy or means: it is mentioned only as the hoped-for "end" of the operative policy-factors previously enumerated. It is not stated, and we think not intended, as a blanket grant of power to the Commission effective to nullify the express prohibition of rate differentials. By its emphasis on the supposed needs of national defense the Commission overrides the express prohibition of rate differentials without invoking, and without basis for invoking, the two policy-factors of the NTP discussed above, which may properly qualify that prohibition. Its stress on national defense also brings it into conflict with all three policy-factors enumerated in § 15(a)(2), viz, the effect of the TOFC proposed rates on the TOFC carriers, the public need of railroad service at the lowest compensatory rate, and the carriers' need for compensatory revenues. These three factors are as much a part of the national policy as the several policy-factors in the NTP declaration. Even if these factors were deemed to conflict with each other, we think it not proper to disregard the more recent expressions of Congressional intent contained in paragraph (3) of § 15(a).

Moreover, we find scant basis of fact supporting the Commission's action even if its interpretation of the applicability of the "national defense" clause were correct. The pertinent

evidence seems to be confined to: (1) a 1955 report of the U.S. Maritime Administration entitled "Review of the Coastwise and Intercoastal Shipping Trades." This report stresses  
 275 the need for break-bulk capacity. Neither Seatrain nor Sea-Land now have such capacity. (2) S. Rep. 2494, 81st Cong., 2d Sess. (1950), which refers in passing to the importance of coastal shipping to the national defense. But the Senate Report is eleven years old, and does not seem to have resulted in legislation. Whatever its relevance in 1950, it must yield to the specifics of the 1958 Act. After all, so far as appears, compulsory rate differentials were not set up to protect the coastwise carriers at the expense of competing modes and the shipping public, from their tremendous loss of tonnage between 1940 and 1958. R. 27.

The Commission says that "shipper evidence \* \* \* is indicative of a need by the general public for the services of these lines." R. 49. This statement assumes the matter for decision: since cost is a major factor, as long as the Commission maintains a rate differential shippers will "need" the lower-rate mode. Should the Commission heed the statute and allow the reductions, the "need" in evidence may well disappear.

The defendants' other arguments can be disposed of shortly.

The Commission indicates, and the government insists, that a full-fledged rate war is the inevitable consequence of allowing the proposed rate reduction. But surely, under its power to fix minimum rates, 49 U.S.C. § 15(1), the Commission will have power to disapprove rates not compensatory. Nothing in this opinion disparages that power.

Seatrain in its brief expresses fear that the proposed rates, if effective, would eliminate it as a competitor and suggests that the railroads might use its demise as an opportunity for rate increases. That bogie is laid at rest by 49 U.S.C. § 4(2). In other respects, the Seatrain position is largely that of Sea-Land and the government except that Seatrain produced no evidence from which its costs could be found. R. 38.

276 The government further argues that the proposed rates were disallowed not because a differential was needed to protect the water carriers but because the railroads failed to sustain the burden of proof. Thus it says in its brief:

"when the proponents of a lowered rate which will deprive another mode of needed traffic, indeed deprive it of any opportunity to compete, fails to establish that the proposed rates are not cost-justified in that they reflect inherent cost advantages, then the rate should, not, and certainly need not, be allowed." Beyond doubt, in the situation here, the burden was upon the railroads, as proponents, to submit evidence from which their own costs for the 66 movements could be determined. Indeed, the Act, 49 U.S.C. § 15(7), provides that "the burden of proof shall be on the carrier [who seeks a rate-change] to show that the proposed changed rate \* \* \* is just and reasonable." But where, as here, a rate-change is protested because of its effect upon a competing mode by one who claims to have the inherent advantage of lower costs, it is for the protestant to show its costs. This was expressly recognized in the dissenting report herein and not disputed in the majority report. And in the report of the Commission in No. 32920 on "Various Commodities from or to Arkansas and Texas," decided June 22, 1961, this rule was expressly recognized.

Finally, the government urges that even if the Commission's order was improperly based on a belief that the water carrier traffic, notwithstanding § 15(a)(3), should be protected, it would be futile and fruitless for us to set aside the order because the same order would then be made upon another ground, viz., that the water carriers were in fact the low-cost mode. As we have shown, no adequate basis for such a ground of decision is disclosed in the present record. But even if in this we are wrong, we cannot say what disposition the Commission would

make of the controversy if authoritatively advised that  
 277 the rationale of the report now before us is erroneous.

In that event, it would be for the Commission, not this court, to decide whether the record should be reopened for further evidence and to evaluate the evidence. *Securities and Exchange Commission v. Chenery Corp.*, 318 U.S. 80 at pp. 87, 88.

Accordingly, the order requiring cancellation of the TOFC rates is set aside, and the Commission is enjoined from cancellation of TOFC rates which return at least the fully-distributed cost of carriage.

If, however, on some enlarged record the Commission shall find that the water carriers are, in general the low-cost mode, and if it shall also find that value-of-service considerations demand water carrier rates on particular movements and commodities which each return to the water carriers more than their fully-distributed costs, our injunction will not go so far as to prevent the Commission from requiring that TOFC rates be set high enough to protect water carrier traffic; provided, however, a railroad rate for a particular movement, if it yields the railroad's fully-distributed cost which is lower than the water carrier's fully-distributed cost, may not be disturbed. It is noted that at least two of the rates involved in this proceeding were found to fall in this two-pronged category. See R. 35.

A decree in accordance with this opinion may be submitted by the plaintiffs, on notice unless consultation amongst the parties shall bring about a waiver of notice.

CARROLL C. HINCKS,  
*U.S. Circuit Judge.*

ROBERT P. ANDERSON,  
*U.S. District Judge.*

WM. H. TIMBERS,  
*U.S. District Judge.*

NOVEMBER 15, 1961.



The I.C.C. report speaks freely of "out-of-pocket" costs and of "fully-distributed" costs but gives no definition to the sense in which it uses these terms. Since an understanding of the I.C.C.'s cost techniques is necessary to an understanding of its decision, we state in this appendix our understanding of the I.C.C. cost technique as gleaned from the sources indicated.

The I.C.C. employs different techniques for estimating railroad and water-carrier costs, reflecting the differing characteristics of each mode.

Water-carrier costs are calculated by traditional accounting methods, since they are "largely associated with the individual accounting unit," Meyer, Peck, Stenason & Zwick, *Competition in the Transportation Industries*, 112 (1959)—i.e., the operations of a given ship or ships. The costs for component items—including steamships, trucks, stevedoring charges, port charges, interest and depreciation, the motor service charges at each end of the voyage, and overhead—are calculated for representative voyages. Costs per ton-mile are computed by applying average figures for tonnage and mileage.

Costs are then broken down into two categories, (1) "out-of-pocket" and (2) "fully-distributed." "Out-of-pocket" costs represent a rough approximation of the long-run marginal (i.e., added) costs of carriage. Estimates are made of the degree to which each of the cost components mentioned above—steamships, trucks, stevedoring, etc.—varies with the volume of traffic carried. To arrive at a ton-mile figure, non-varying expenditures (those attributable to size of plant rather than intensity of use) such as billing, terminal supervision, garages, etc., are subtracted from total expenditures, and the remainder divided by ton-miles carried. See Rationale of Cost Finding Section, Hearing Examiner's Proposed Report, I. & S. Docket No. M-10415, Appendix B.

"Fully-distributed" costs, by contrast, represent an approximation of the total long-run costs of remaining in operation. To obtain fully-distributed cost, corporate overhead is first added to "full" operation cost, i.e., to all direct expenditures. Then, on the basis of a 95% "operating ratio," i.e., the ratio between direct expenditures plus overhead, and fully-distributed costs, an allowance for profit is calculated which amounts to about 5.3% (.0526+) of direct expenditures plus overhead. The fully-distributed cost is the sum of this profit, the overhead, and direct expenditures. This method is used by the I.C.C. whenever capital investment is low, so that a return figure based on such investment would not reflect the size of operations. Sea-Land pressed this form of calculation because its vessels are largely chartered and its motor service hired. In this, the I.C.C. acquiesced. See Rationale of Cost Finding Section, K & S. Docket No. M-10415, *supra*.

Railroad cost figures cannot be developed so easily. The basic difficulty is in "multiple use"—the tracks, rolling stock, terminal expenses, and even the trains themselves, carry mixed shipments to different destinations. Apportionment of costs to the different services offered is a complex and difficult process. For example, assume a train already made up and ready to go. What is the marginal or added cost of tacking on two more flatcars? Or should these two cars bear some proportion of costs incurred before they were added, which indeed would have been fully incurred even if the cars had not been added?

281 For accounting purposes, the cars are regarded as bearing a proportionate share of total cost—in other words, the marginal cost of added shipments is in reality average cost of all shipments. Commonly, costs per unit of output—or variable costs—are calculated by a formula of the type  $Y = a + bX$ , where  $Y$  is the ratio of total operating expenses to miles of track;  $a$  is "threshold" cost of operation: non-fixed investment which nevertheless must be made in some minimum quantity when *any* amount of activity is undertaken (such as the pay of one secretary—you can't hire one half a secretary);  $b$  is cost per unit of output; and  $X$  is the ratio of gross ton-miles of traffic to total miles of track. From the above formula, the I.C.C. derives what it calls a "percent

variable." This is an expression of the proportion of variable costs to total costs— $\frac{bX}{Y}$ . Meyer, et al., *supra*, at 274.

To estimate the costs of a particular service, the following procedure is used. Some costs, such as right-of-way maintenance, are developed for the system as a whole, on a gross ton-mile basis, and this average then applied to the movements in question. Other costs, capable of direct observation—e.g., use of switch engines, special equipment—are then added, after application of the "percent variable" derived earlier. The result is the "out-of-pocket" cost of service. See, e.g., *Rational* of Cost Finding Section, at R. 54 and following.

For our purposes, it is important to realize what kinds of railroad expenses are attributed to a service by the I.C.C. in calculating "out-of-pocket" costs. (These expenses are included by attribution whenever they are not susceptible of direct observation.) Total operating expense "includes all the labor, fuel, and miscellaneous variable costs associated with the operation of trains, yards, and stations; it also encompasses marketing, advertising, selling and promotion expenses under the catch-all heading of traffic expenses; even supervisory and legal expenses are included; furthermore, the major portion of capital consumption costs is found in the maintenance-of-way and structure and in maintenance-of-equipment accounts. In short, railroad operating expenses include virtually all important railroad costs except property taxes and interest payments." Meyer, et al., *supra*, at 275. Furthermore, shares of these tax and interest payments, as well as a return figure, are then assigned to the particular traffic under investigation in order to calculate "out-of-pocket" costs. See R. 55.

"Fully-distributed" costs include, in addition to "out-of-pocket" costs: the non-varying portion of operating expenses (b in the formula); the remainder of taxes and interest; the remainder of capital costs; and a 4% return on investment. "Fully-distributed" costs of a particular service are then obtained by adding an aliquot share of the system's fully-distributed cost components to the calculated "out-of-pocket" cost of the service. Cf. R. 55-56.

282 In United States District Court, District of  
Connecticut

Civil action No. 8679

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD  
COMPANY, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE  
COMMISSION, DEFENDANTS

SEA-LAND SERVICE, INC., AND SEATRAN LINES, INC.  
DEFENDANTS-INTERVENORS

*Judgment*

January 8, 1962

[File endorsement omitted.]

This cause having been heard on the plaintiffs' complaint seeking to enjoin, set aside, and annul a report and order of the Interstate Commerce Commission dated December 19, 1960 and the order dated February 3, 1961 in a proceeding styled Commodities—Pan-Atlantic Steamship Corporation, Investigation and Suspension Docket No. M-10415, which embraces a proceeding styled Piggy-back Rates—Between East and Texas, Investigation and Suspension Docket No. 6834, to the extent that such reports and orders found unlawful and unreasonable certain Trailer-on-Flatcar (TOFC) rates described more fully therein and included in Investigation and Suspension Docket No. 6834; and the parties appearing by counsel having been heard and the issues duly tried; and the Court having concluded in its opinion that plaintiffs are entitled to judgment:

It is hereby Ordered, Adjudged and Decreed that the above described reports and orders of the Interstate Commerce Commission entered December 19, 1960 and February 3, 283 1961, to the extent that they found unlawful and unreasonable certain Trailer-on-Flatcar (TOFC) rates described more fully therein, be set aside and vacated in accordance with the opinion of this Court and that the Inter-

state Commerce Commission is hereby enjoined from enforcing them without prejudice to such further proceedings as the Commission may deem appropriate.

Issued at New Haven, Connecticut, this 8th day of January, 1962.

CARROLL C. HINCKS,  
United States District Judge.  
ROBERT P. ANDERSON,  
United States District Judge.  
WILLIAM H. TIMBERS,  
United States District Judge.

284 In United States District Court, District of  
Connecticut

*Notice of appeal by I.C.C. to the Supreme Court of the United  
States*

Filed March 9, 1962

I

[File endorsement omitted.]

[Title omitted.]

Notice is hereby given that the Interstate Commerce Commission, a defendant in the above-entitled civil action, hereby appeals to the Supreme Court of the United States from the final judgment entered in this action on January 8, 1962.

This appeal is taken pursuant to 28 U.S.C. §§ 1253 and 2101(b).

II

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in such transcript the following:

- (1) Complaint filed February 2, 1961, with its Appendices A and B.

285 (2) Order of Court entered on or about March 6, 1961, allowing intervention of Seatrain Lines, Inc., as a defendant.

(3) Answer of Intervenor, Seatrain Lines, Inc., apparently filed on or about March 6, 1961.

(4) Order of Court, dated April 3, 1961, permitting additional railroads to be included as parties plaintiff.

(5) Joint Answer of the United States of America and the Interstate Commerce Commission, filed on or about April 3, 1961.

(6) Order of Court, dated April 17, 1961, allowing intervention of Sea-Land Service, Inc., as a defendant.

(7) Answer of Intervenor, Sea-Land Service, Inc., filed in April 1961.

(8) Opinion of the Court filed November 15, 1961.

(9) Judgment of the Court filed January 8, 1962.

(10) The certified copy of the record before the Interstate Commerce Commission in its Investigation and Suspension Dockets Nos. M-10415, 6834, M-11375, 6906, and embraced proceedings, admitted into evidence at the hearing before the Court on June 20, 1961, and accompanying certificates of the Secretary of the Interstate Commerce Commission, dated April 20, 1961, specifying the contents of the record certified.

(11) This Notice of Appeal.

### III

The following questions are presented by this appeal:

1. Whether, under Section 15a(3) of the Interstate Commerce Act and the National Transportation Policy, the Commission may find not shown to be just and reasonable, and require cancellation of, certain reduced railroad trailer-on-flatcar rates, which are compensatory (i.e., exceed the  
286 railroads' out-of-pocket costs in all instances and their fully-distributed costs in many instances) but represent substantial reductions from levels maintained elsewhere to the same levels of the rates of the coastal water carriers and are applicable only to points served by the coastal water carriers, where the water carriers' service cannot compete at equal rates with the railroads' service and where the reduced rail rates are part of a program of rail rate reductions which threatens the continued existence of the coastal water carriers?



2. Whether, under the foregoing circumstances, the Commission may find such rail rates to be unlawful without finding as a controlling consideration that the competing water carriers are the low cost mode of transportation?

3. Whether, if the Commission must make such a finding, it must do so in terms of the "integral overall rate structure" of the competing modes of transportation?

4. Whether, if the Commission must make such a finding, it is precluded from rejecting any rail rate for a particular movement which yields the railroad's fully-distributed cost which is lower than the fully-distributed cost of the competing water carrier?

(S) ROBERT W. GINNANE,  
General Counsel,

(S) B. FRANKLIN TAYLOR, Jr.,  
Associate General Counsel, Interstate Commerce  
Commission, Washington 25, D.C.  
Attorneys for the Interstate Commerce Commission.

287 [Proof of service omitted in printing.]

289 In United States District Court, District of  
Connecticut

*Notice of appeal by Sea-Land Service, Inc., to the Supreme  
Court of the United States*

Filed March 9, 1962

[File endorsement omitted.]

[Title omitted.]

# I

Notice is hereby given that Sea-Land Service, Inc. an intervening defendant in the above-entitled civil action, hereby appeals to the Supreme Court of the United States from the final judgment entered in this action on January 8, 1962.

This appeal is taken pursuant to 28 U.S.C. §§ 1253 and 2101(b).

## II

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in such transcript the following:

290 (1) Complaint filed February 2, 1961, with its Appendices A and B.

(2) Order of Court entered on or about March 6, 1961, allowing intervention of Seatrain Lines, Inc., as a defendant.

(3) Answer of Intervenor, Seatrain Lines, Inc., apparently filed on or about March 6, 1961.

(4) Order of Court, dated April 3, 1961, permitting additional railroads to be included as parties plaintiff.

(5) Joint Answer of the United States of America and the Interstate Commerce Commission, filed on or about April 3, 1961.

(6) Order of Court, dated April 17, 1961, allowing intervention of Sea-Land Service, Inc., as a defendant.

(7) Answer of Intervenor, Sea-Land Service, Inc., filed in April 1961.

(8) Opinion of the Court filed November 15, 1961.

(9) Judgment of the Court filed January 8, 1962.

(10) The certified copy of the record before the Interstate Commerce Commission in its Investigation and Suspension Dockets Nos. M-10415, 6834, M-11375, 6906, and embraced proceedings, admitted into evidence at the hearing before the Court on June 20, 1961, and accompanying certificates of the Secretary of the Interstate Commerce Commission, dated April 20, 1961, specifying the contents of the record certified.

(11) This Notice of Appeal.

## III

The following questions are presented by this appeal:

1. Whether, under Section 15a(3) of the Interstate Commerce Act and the National Transportation Policy, the Commission may find not shown to be just and reasonable,  
291 and require cancellation of, certain reduced railroad trailer-on-flatcar rates, which are compensatory (i.e.,

exceed the railroads' out-of-pocket costs in all instances and their fully-distributed costs in many instances) but represent substantial reductions from levels maintained elsewhere, to the same levels of the rates of the coastal water carriers and are applicable only to points served by the coastal water carriers, where the water carriers' service cannot compete at equal rates with the railroads' service and where the reduced rail rates are part of a program of rail rate reductions which threatens the continued existence of the coastal water carriers?

2. Whether, under the foregoing circumstances, the Commission may find such rail rates to be unlawful without finding as a controlling consideration that the competing water carriers are the low cost mode of transportation?

3. Whether, if the Commission must make such a finding, it must do so in terms of the "integral overall rate structure" of the competing modes of transportation?

4. Whether, if the Commission must make such a finding, it is precluded from rejecting any rail rate for a particular movement which yields the railroad's fully-distributed cost which is lower than the fully-distributed cost of the competing water carrier?

(S) WARREN PRICE, Jr.,

1000 Vermont Avenue, N.W., Washington 5, D.C.

Attorney for Sea-Land Service, Inc.

ALBERT W. CRETELLA,

153 Court Street, New Haven, Conn.,

Attorney for Sea-Land Service, Inc.

292 [Proof of service omitted in printing.]

294 In United States District Court, District of  
Connecticut

*Notice of appeal by United States to the Supreme Court of  
the United States*

Filed March 9, 1962

[File endorsement omitted.]

[Title omitted.]

## I

Notice is hereby given that the United States of America, a defendant in the above-entitled civil action, hereby appeals to the Supreme Court of the United States from the final judgment entered in this action on January 8, 1962.

This appeal is taken pursuant to 28 U.S.S. §§ 1253 and 2101(b).

## II

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in such transcript the following:

(1) Complaint filed February 2, 1961, with its Appendices A and B.

(2) Order of Court entered on or about March 6, 1961, allowing intervention of Seatrain Lines, Inc., as a defendant.

(3) Answer of Intervenor, Seatrain Lines, Inc., apparently filed on or about March 6, 1961.

295 (4) Order of Court, dated April 3, 1961, permitting additional railroads to be included as parties plaintiff.

(5) Joint Answer of the United States of America and the Interstate Commerce Commission, filed on or about April 3, 1961.

(6) Order of Court, dated April 17, 1961, allowing intervention of Sea-Land Service, Inc., as a defendant.

(7) Answer of Intervenor, Sea-Land Service, Inc., filed in April 1961.

(8) Opinion of the Court filed November 15, 1961.

(9) Judgment of the Court filed January 8, 1962.

• (10) The certified copy of the record before the Interstate Commerce Commission in its Investigation and Suspension Dockets Nos. M-10415, 6834, M-11375, 6906, and embraced proceedings, admitted into evidence at the hearing before the Court on June 20, 1961, and accompanying certificates of the Secretary of the Interstate Commerce Commission, dated April 20, 1961, specifying the contents of the record certified.

(11) This Notice of Appeal.

## III

The following questions are presented by this appeal:

1. Whether, under Section 15a(3) of the Interstate Commerce Act and the National Transportation Policy, the Commission may find not shown to be just and reasonable, and require cancellation of, certain reduced railroad trailer-on-flat-car rates, which are compensatory (i.e., exceed the railroads' out-of-pocket costs in all instances and their fully-distributed costs in many instances) but represent substantial reductions from levels maintained elsewhere to the same levels of the rates of the coastal water carriers and are applicable only to points served by the coastal water carriers, where the water carriers' service cannot compete at equal rates with the railroads' service and where the reduced rail rates are part of a program of rail rate reductions which threatens the continued existence of the coastal water carriers.

296 2. Whether, under the foregoing circumstances, the Commission may find such rail rates to be unlawful without finding as a controlling consideration that the competing water carriers are the low cost mode of transportation.

3. Whether, if the Commission must make such a finding, it must do so in terms of the "integral overall rate structure" of the competing modes of transportation.

4. Whether, if the Commission must make such a finding, it is precluded from rejecting any rail rate for a particular movement which yields the railroad's fully-distributed cost which is lower than the fully-distributed cost of the competing water carrier for such movement.

(S) RICHARD A. SOLOMON,

(S) RICHARD H. STERN,

*Attorneys, Department of Justice.*

(S) ROBERT C. ZAMPANO,

*United States Attorney.*

297 [Proof of service omitted in printing.]

298 In United States District Court, District of  
Connecticut

*Notice of appeal to the Supreme Court of the United States by  
Seatrain Lines, Inc.*

Filed March 9, 1962

[File endorsement omitted.]

[Title omitted.]

# I

Notice is hereby given that Seatrain Lines, Inc., defendant-intervenor, hereby appeals to the Supreme Court of the United States from the final order, decree and judgment, entered in this action on January 8, 1962.

This appeal is taken pursuant to 28 U.S.C. §§ 1253 and 2101(b).

# II

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include the following:

- 299 1. Complaint filed February 2, 1961, with its Appendices A and B.
2. Answer of defendant-intervenor, Seatrain Lines, Inc., filed on February 28, 1961.
3. Order of Court entered on March 7, 1961, allowing intervention of Seatrain Lines, Inc., as a defendant.
4. Order of Court, dated April 3, 1961, permitting additional railroads to be included as parties plaintiff.
5. Joint Answer of the United States of America and the Interstate Commerce Commission, filed on or about April 3, 1961.
6. Order of Court, dated April 17, 1961, allowing intervention of Sea-Land Service, Inc., as a defendant.
7. Answer of defendant-intervenor, Sea-Land Service, Inc., filed in April 1961.
8. Opinion of the Court filed November 15, 1961.
9. Judgment of the Court filed January 8, 1962.
10. The certified copy of the record before the Interstate Commerce Commission in its Investigation and Suspension



Dockets Nos. M-10415, 6834, M-11375, 6906, and embraced proceedings, admitted into evidence at the hearing before the Court on June 20, 1961, and accompanying certificates of the Secretary of the Interstate Commerce Commission, dated April 20, 1961, specifying the contents of the record certified.

# 11. This Notice of Appeal.

300

III

The following questions are presented by this appeal:

1. Whether in determining the reasonableness of drastically reduced rail rates, which are limited to points served by water carriers and which are designed to divert traffic from regulated common carriers by water, the Interstate Commerce Commission is required to place exclusive reliance on the costs of the competitive rail and water services?

2. Whether Section 15a(3) of the Interstate Commerce Act, as added to that Act in 1958, made a major modification in the National Transportation Policy, so as to make costs of providing service the principal, if not the exclusive, criterion, by which the lawfulness of competitive rate reductions must be determined?

3. Whether the Interstate Commerce Commission's findings that certain reduced railroad trailer-on-flat-car rates would preclude the coast-wise water carriers from competing at equal rates with the railroad's service, would result in a vicious cycle of rate cutting and would threaten the continued existence of the coast-wise water carrier industry generally and its further findings that coast-wise shipping is important for national defense purposes and is an important and essential part of a national transportation system adequate to meet the needs of the commerce of the United States justify the conclusion of the Commission that the plaintiff railroads failed to sustain their statutory burden of proof "that the proposed

301 changed rate \* \* \* is just and reasonable" under Section 15(7) of the Interstate Commerce Act?

GUMBART, CORBIN, TYLER &  
COOPER,

(S) MORRIS TYLER,  
205 Church Street, New Haven, Connecticut,

(S) RALPH D. RAY,  
25 Broadway, New York 4, New York,  
*Attorneys for Seatrains Lines, Inc.*

302 [Proof of service omitted in printing.]

303 Supreme Court of the United States

Nos. 108, 109, 110, and 125, October Term, 1962

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD  
COMPANY, ET AL.

SEA-LAND SERVICE, INC., APPELLANT

v.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD  
COMPANY, ET AL.

SEATRAN LINES, INC., APPELLANT

v.

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,  
ET AL.; AND

UNITED STATES, APPELLANT

v.

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,  
ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF CONNECTICUT

*Order noting probable jurisdiction*

October 8, 1962

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated and a total of two hours is allowed for oral argument.

Mr. Justice Goldberg took no part in the consideration or decision of these cases.